

Town of Farmington  
Zoning Board of Adjustment Meeting Minutes  
Thursday, November 2, 2023  
356 Main Street-Farmington, NH 03835

**Board Members Present:**

John Scruton, Chairman  
Joe Pitre, Vice Chairman  
John David Aylard, Clerk/Secretary  
Bill Fisher  
Bob Morgan

**Others Present:**

Tracy Hayes, applicant  
Janet Hackett, abutter

**1). Call to Order:**

Chairman Scruton called the meeting to order at 7:01 p.m.

**2). Pledge of Allegiance:**

All present stood for the Pledge of Allegiance.

**3).Review of Minutes:**

**September 7, 2023-** Public Session Minutes- No errors or omissions

**Motion:** (Pitre, second Morgan) to approve the minutes as written passed 4-0-1 (Aylard abstained).

**4).Old Business:** None

**5). New Business:**

**Public Hearing for a Variance by Tracy Hayes, Tax Map U12, Lot 9.** A request has been made for a Variance under Table 2.04 (B) Space and Bulk Standards. The applicant is requesting a Variance for relief from the maximum new residential density standards that require one unit per acre and be allowed to convert two existing offices into two apartments, where only one is permitted. The property is in the Urban Residential District.

Chairman Scruton read the above public hearing notice aloud and said all public hearing requirements have been met for noticing and this request for a Variance is a specific restriction in the Zoning Ordinance that they're asking to be able to not apply in this situation. He asked if the applicant wanted to come forward and make a presentation. Applicant Tracy Hayes came forward and said the building is very new and it's already set up as an office space within each unit. She said there is an upstairs unit and a downstairs unit and within each one there is already an office space so what they are looking to do is to convert the two which are completely separate with no connections between the two. She said they are looking to convert each unit into a one bedroom apartment and the lot is 1.6

apartment.

5).Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:

Applicant response: The property is currently commercially zoned with 1.61 acres. The property needs an additional .39 acres to increase the residential units by one additional one bedroom unit (no additional acreage is available). The general public purpose of the ordinance prohibition is to prevent a large number of residences in a small physical location. We are only looking to increase it by one 1 bedroom apartment and therefore is no fair and substantial relationship. As we are simply increasing it by 1 small apartment the proposed use is reasonable.

Mr. Scruton asked if she wanted to add anything to that.

Ms. Hayes said if it were to stay commercial for them it would be a hardship in that it's very difficult to find commercial tenants. She said they are looking to convert it to residential to help increase the residential market and be able to rent out an apartment.

Mr. Scruton said it seems that they want it both ways-they want to keep the commercial and add a residential.

Ms. Hayes said they are not keeping the offices as commercial those 2 they want to completely convert to residential and they are just looking to keep the garage as commercial. She said the garage is not built as a home garage and she couldn't tell them how high the ceilings are and guessed they are probably more than 2 stories high. I don't know what other use we would have for that property other than as a commercial location she said.

Mr. Pitre said he would like to hear from Mr. Fisher on what the proposed zoning changes are for the coming year from the Planning Board.

Mr. Fisher said the zoning changes they're proposing are still in the "infant" stage. He said they are trying to hammer out some things and have it ready for public hearings in December. He said they are looking at increasing the density of properties in the Rural Residential from one unit per acre to one unit per half acre.

He said it has been noted that affordable housing is a big issue within the state of NH and looking at surrounding towns they're all changing their density requirements and this gets us more into keeping with surrounding towns but only the Urban Residential and the Rural Residential not in the Agricultural Residential. He said that's all in the future and it has to be voted on at Town Meeting and they will see how the public feels about it.

Mr. Pitre asked what the requirements were when zoning first came to Farmington in 1979 and if he knew what the density was.

Mr. Fisher said he was not here at that time but for the past 10 years or so it has been 1 unit per acre in the UR.

Mr. Pitre said prior to that it was 1 unit per half acre per residence actually and that seemed to work well. He said the legislature has been looking at this very closely and they appropriated

She said the downstairs unit has a handicapped ramp and wide doors as it was built to be handicapped accessible. She said when they add a shower to the bathroom to make it an apartment there just isn't enough room to make it a fully ADA accessible apartment for the handicapped but they're mindful that somebody may want to use the ramp or be staying in the apartment not going out to work all day and it's definitely something they'd not want to have them sharing a wall with somebody who's very loud.

Mr. Scruton said they received 2 letters from abutters and read aloud the first letter from David and Patricia Sprague: "As abutters to 83 Charles St. my wife and I would like to not allow a variance. We are unable to attend the meeting."

Mr. Scruton said this does not contain the reasons he does not want a variance to be allowed. He said the other abutters Frank and Pamela Lord wrote and addressed each of the 5 points of the variance that need to be made and read each of those points into the record as follows:

"We oppose the above request for variance as totally and completely in disregard of the ordinance that specifies one single dwelling unit per acre in an Urban Residential District. This increased density is out of line with the surrounding neighborhood. There is no reason to go against this ordinance other than to profit the developer. And that is not a reason. Further it fails to satisfy the ZBA decision criteria for the granting of a variance.

1). The Variance Will Not Be Contrary to Public Interest- it most certainly will. The essential characteristic of the upper Charles St. section of Rt. 153 is one of lightly wooded open space and un-crowded single family homes scattered throughout the neighborhood. Incorporating an apartment building into an otherwise established neighborhood of single family homes would interrupt the consistent tenure of the existing structures, jeopardize the rural quiet atmosphere and set precedence for further development that this very ordinance was created and intended to prevent.

2). The Spirit of the Ordinance is Observed-Although the deed of record indicates the property consists of 1.60 acres less than .5 acre is inhabitable. The remaining property consists of sloping wetlands suitable for wildlife only. Therefore doubling the allowed density only serves to constrict what is already insufficient square footage necessary to be consistent with surrounding properties.

3). Substantial Justice is Done - No gain to the general public will flow from this project.

4). The Values of Surrounding Properties are not Diminished- The property barely meets the minimum side setback to our property and increasing the density of the property will further compromise the essential character of the locality and more importantly negatively impact the value of our property as well as that of our neighbors.

5). Literal Enforcement of the Provisions of the Ordinance Would Result in an Unnecessary Hardship- Not at all. The zoning ordinance allows for a single dwelling unit to be built on the location and the applicant was aware of this when the property was purchased. With proper variance approval the building can be converted to residential and the developer is free to avail

the size of the encroachment and some they have denied because there is too much encroachment in that setback or in case the size of the lot. He said that makes it .6 per residence so he thought it was a moot point.

Mr. Fisher said a precedence was not set 2 or 3 months ago when the granted permission for a variance off of Grondin Drive for 8 units to be on 3 acres. He said they granted that variance and this is less of an impact than that was.

Mr. Aylard said but those were all pre-existing and they weren't changing anything.

Mr. Fisher said this is basically pre-existing they're not changing the footprint they're just rehabbing it and redeveloping it into 2 rental units.

Ms. Hayes said the only thing that needs to be changed is a shower added in the bathroom.

Mr. Fisher said even though there are some small setbacks to this but it's nothing more than what they have granted in the past.

Mr. Pitre said variances allow a little difference from what the actual regulations say.

Mr. Scruton said the purpose of the Zoning Board is to grant reasonable relief to the ordinance if in fact these 5 tests are met.

Mr. Fisher asked if they need to take each one of these and give their reasons under the new state laws.

Mr. Scruton said yes. He then called for a motion that the variance:

1). Will not be contrary to the public interest:

**Motion:** So moved by Mr. Fisher and seconded Mr. Morgan.

Mr. Fisher said they are returning it from a business back to a residential area which is in keeping with the area so it's only improving the area by taking out the businesses and putting in residential units. He said as far as possible business use in the future that is not what this variance is requesting they're just requesting the 2 residential units.

Mr. Scruton said he was going to recommend that at the end that there be 2 stipulations which Ms. Hayes has agreed to at this point that help on this not being contrary to the public interest.

He said there are 2 one bedroom apartments and the business that will go in there will be something that is quiet.

Mr. Fisher asked if they can legally make stipulations. He said he knows she has agreed to it but asked if they can legally put that as a clause to their final decision.

Mr. Scruton said he believes they can because if this was going to be two 3 bedroom apartments that would be a whole different story as far as the public interest goes. He said it's within the current footprint, it's one bedroom (per apartment) and he would not vote in favor of it being in the public interest if it was different than what is proposed here.

Mr. Fisher said if it was different than what is proposed here then his reasoning would be completely different but putting that in would be a Planning Board stipulation not a variance stipulation. It would be up to the Planning Board to say you can or cannot do this.

Mr. Scruton said he disagreed but they could talk about that when they get there and he just

allowed to convert 2 existing offices into 2 apartments where only 1 is permitted. That's why we're here tonight nothing to do with business that may be on the property in the future he said.

Mr. Scruton said they will vote on that at the end and right now they are voting on public interest. He read the motion was the variance would not be contrary to the public interest and called for the vote.

**Vote:** the motion passed 5-0.

**2). The spirit of the ordinance is observed:**

**Motion:** So moved by Mr. Pitre, seconded by Mr. Morgan.

Mr. Scruton asked if Mr. Pitre's argument was that .39 acres is a small amount and that there is residential in the area.

Mr. Pitre said yes.

**Vote:** the motion passed 4-1 (Aylard opposed).

**3). Substantial Justice is Done:**

**Motion:** (Fisher, second Morgan) that substantial justice is done;

Mr. Fisher said the reason is that we're gaining residential rental properties in a town that needs residential rental properties so there is a gain to the general public.

**Vote:** the motion passed 5-0.

**4). The value of the surrounding properties are not diminished:**

**Motion:** So moved by Mr. Pitre, seconded by Mr. Fisher.

Mr. Pitre said the character of the neighborhood is not changed significantly.

Mr. Scruton said there was no evidence presented of a reduction in value. He said there was a general statement made by Mr. Lord that it negatively impacted the value but no evidence to support that statement.

**Vote:** the motion passed 5-0.

**5). Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:**

**Motion:** So moved by Mr. Pitre, seconded by Mr. Morgan.

Mr. Pitre said again the .39 acres comes into play it's a very small amount and there's plenty of parking. He said they have watched other properties go into disarray because of commercial use and this is probably a good use for the property and it fits more into the residential use within the neighborhood. He said it could possibly cause a hardship if they don't approve it because it's already been the effort to rent it out to commercial property but obviously there's no use there now.

Mr. Scruton said the hardship is the uniqueness of the property as it currently exists as far as it is reasonable what is being proposed.

Mr. Fisher said one of the requirements is that no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of



would have to come before site review.

Mr. Scruton said he thought if she was renting it to an electrical contractor who kept his stuff there it wouldn't need site review. He asked the board to return to the motion and that the motion is to approve the variance as requested.

Mr. Pitre said there was another motion made afterwards on restrictions.

The Recording secretary noted that Mr. Aylard said he would like to make a motion but didn't actually do so.

Mr. Fisher said they could have 2 motions one to grant or not grant the variance and a second motion for any stipulations to be added to the granting of the variance.

Mr. Scruton said if they do the first one then they are done with it. He said she asked to convert the 2 offices to 2 one bedroom apartments and keep the garage as commercial and this allows her to do it. We're approving the variance as requested he said.

Mr. Fisher said the public hearing is only for the 2 rental units even though in her statement in her application she requested to use the garage as a business. He said as advertised and what was put out to the public is we are here to discuss the residential units only nothing about what's in there for business. He said if that's the case they need a new public hearing and they need to continue this to add businesses to it or they just stick with the residential as it is in the public hearing. What the Town put out and what is lawful is this public hearing is on residential units and not on commercial uses he said.

Chairman Scruton called for the vote on the motion to approve the variance as requested.

**Vote:** the motion passed 5-0.

**6). Any Other Business before the Board:** None

**7). Adjournment:**

**Motion:** (Pitre, second Morgan) to adjourn the meeting passed 5-0 at 7:51 p.m.

Kathleen Magoon

Recording Secretary

  
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John Scruton, Chairman