

NORTH BERWICK PLANNING BOARD

MINUTES OF PLANNING BOARD MAY 13, 2021

Present: Jon Morse, David Ballard, Scott Strynar, Mark Cahoon, Anne Whitten (in at 6:33 pm)

Absent: Chairman Geoffrey Aleva

Also Present: Chris Lee, Andrea Spiegel, Luke Robertson, Marjorie Chapin

1. Call To Order:

Vice Chairman Jon Morse will be the Acting Chairman for tonight's meeting. Acting Chairman Morse opened the meeting at 6:31 pm.

Acting Chairman Morse acknowledged the passing of our Code Enforcement Officer, Roger Frechette. He was a good man, hard worker, did a good job for the town and he will be missed. The Board sends their prayers to the family.

2. Review Previous Minutes:

Scott Strynar motioned to approve the minutes of April 22, 2021 as written. David Ballard seconded the motion. VOTE: 4-0

Acting Chairman Morse moved Mark Cahoon up to full voting status for tonight's meeting.

3. Current Business:

3.1 Tabled from April 22, 2021

Marjorie Chapin

460 Bauneg Beg Hill Road (Map 010 Lot 031)

Request: Applicant proposes to renovate the second floor of their garage into a 615 sf In-Law apartment. Based on the Town of North Berwick Zoning Ordinance, Article 4.2 Land Uses (table), a Conditional Use Permit shall be obtained for this type of use in the Farm and Forest Zone.

Mary Chapin stepped forward to discuss the project. She stated that she built her home in North Berwick back in 2001. She added a garage to it about 10 years ago. She currently has a room on the top of the garage that has sheet rock, flooring, insulation, lights, and a ceiling. She would now like to add some plumbing so she can create a small bathroom. The only partition in the

room would be the bathroom. She would also like to add a counter and have a small kitchen. Ms. Chapin stated that she has a daughter and son-in-law that just had their first baby, and this is the purpose of doing the room. She said that the baby was due in June, but it arrived 2 weeks ago.

Acting Chairman Morse stated that there was an informal discussion after the last meeting regarding stairwells and if they were included in living space. He stated that he couldn't find anything about it in our codes, so he is assuming that they do not apply. Ms. Chapin stated that she had the same question, and she asked her builder about it. He told her that the stairwell was part of the garage and that is not living space, so he did exclude it. Scott Strynar asked her if there was going to be a door at the bottom of the stairs and the upstairs would be open to the stairwell. She stated that there is a wall. Mr. Strynar asked if it was a full wall and if there was going to be a door at the top and the bottom of the stairs. Ms. Chapin said that there is no door at the top of the stairs, but she can put one in if needed. Acting Chairman Morse said that he does not believe that it is a problem because he does not think the stairs are considered to be in the living space. Anne Whitten agreed. She stated that the stairs are not actually in the apartment.

Scott Strynar stated that the house currently has 3 bedrooms. Since they are adding a 4th bedroom, will they be expanding the septic system? Ms. Chapin said that she already expanded it 4 years ago. Acting Chairman Morse asked if the garage was attached to her house. Ms. Chapin said that it was attached by a breezeway. Mr. Strynar asked how the apartment would be heated. Ms. Chapin said that she will be putting in a mini split.

Acting Chairman Morse stated that there was another minor issue. He said that the Standards for In-Law Apartments state that no more than 2 people will live there so he wondered if her daughter was going to be living there with anyone else besides the baby. Ms. Chapin said that she is the one that will be living up there and she has been since the baby was born. She gave the house to her daughter and son-in-law. She stated that the room has been used for guests all along, but she would rather not have to go down the stairs to the main house to use the bathroom.

Mark Cahoon asked if there should be a 2nd exit from the 2nd floor because it is over the garage in case of a fire. Ms. Chapin said that she spoke with Dwayne Morin about that. He told her that the code says the windows need to be a certain size and she meets that requirement, so she is all set. She said that there are a lot of windows and they are all the correct size. David Ballard was reviewing the plans and was trying to figure out where the bathroom was going to be in relation to the landing that is there. Ms. Chapin said that after you go past the landing, there is an 8-foot area in the corner. This is where she will put the bathroom. She said there is also a closet in that area that will be for a stackable washer and dryer with a walk in from the outside. The whole rest of that wall will be the kitchen.

Acting Chairman Morse asked if it was a full height wall to the ceiling in the stairwell. She said that it was not. She stated that it was about $\frac{3}{4}$ high. She said that you can't see over it until you are at the top of the stairway. Acting Chairman Morse wanted to make sure that a kid could not

climb over it and fall. She didn't believe that they could. David Ballard said that his concern was with the doors and possible exhaust fumes coming from the garage. She has 1 door now at the bottom and he asked if she was considering putting one in at the top. Ms. Chapin said that she would rather not but will if she has to. Mr. Ballard asked if it was a fire door at the bottom of the stairs. Ms. Chapin said that it was a steel door like one of her outside doors. Anne Whitten asked if any exhaust would go into the apartment when someone starts the car in the garage. Ms. Chapin said that it did not. Scott Strynar said that there is a door at the bottom of the stairs. He said that once they break the plane of the stairway at the bottom and close the door, it is enclosed there.

Scott Strynar asked how she was going to have hot water. Ms. Chapin said that she was going to have it plumbed. They are going to lift up the flooring in the breezeway and it will come from the house.

Anne Whitten motioned to approve the application for Marjorie Chapin at 460 Bauneg Beg Hill Road (Map 010 Lot 031) to have add an In-Law apartment on the 2nd floor of her garage. Mark Cahoon seconded the motion. VOTE: 5-0

3.2 Luke Robertson

52 High Street (Map 022 Lot 016)

Request: applicant proposes to build a 648 Sq. Ft. In-Law Apartment attached to an Accessory Shed. Based on the Town of North Berwick Zoning Ordinance, Article 4.2 Land Uses (table), a conditional Use Permit shall be obtained for this type of use in the Village A Zone.

Chris Lee stepped forward to discuss the project. He stated that he is the developer and is helping Luke and Andrea build this In-Law Apartment. They are proposing a 648 sf 1 bedroom accessory apartment. Andrea Spiegel, Luke's mother, will be living in it. She is moving here from New Hampshire to be closer to her grandkids. Mr. Lee stated that Mr. Robertson recently bought the property with the intention to do this. They had lots of discussions with Roger Frechette early on in their purchasing process. Mr. Frechette told them that a proposal like this was doable according to the town's bylaws. Mr. Lee said that they understand that, after talking to Dwayne Morin, what they are proposing may be on the edge of what is feasible in North Berwick, but they do think that they have created something that is in compliance with the Zoning Ordinance as it is written.

Mr. Lee stated that it is a reasonably sized property. They are well above the Resource Protection District. The location that they are proposing to build this at is a level graded building site which is a gravel surface area and is currently being used primarily for parking right now. This spot was chosen because it is hidden from the street. They have had discussions with the only neighbor that would be able to see it and they are fine with the project. They are also in compliance with the side setbacks. The new unit would have parking directly off of the existing driveway that they are using. Part of the reason for choosing this particular location was in

consideration of the grading of the site. There is a drop off on the property that goes out towards the barn. He stated that out behind the barn area to the south, the contouring goes in and creates a bit of a slope. If they would try to attach an accessory apartment to the larger barn, it creates a situation where there would be a slippery slope that would not work for Andrea as she gets older. The current location works very well with the property today and for future plans for the property. They are looking to add a pool between the 2 houses creating a family space. There is a fire pit and some outdoor couches around it and a swing set where they kids will be playing. It is also closer to the parking and will be a flat level path to get to the front door of this apartment.

Mr. Lee stated that they will be going underground for the plumbing and electrical. They will create a pump station to get a backup from a 5-foot elevation drop that goes to this site before it flattens back out. They are connecting to an existing sewer from the street. They will also be using public water. They are planning on upgrading the electric service. They have future plans for the garage to be a woodshop so they will upgrade now to prevent future issues.

Mr. Lee stated that there is a large barn on the property. Andrea and Luke hired an engineer to review the barn to see if it was feasible to convert it to an accessory apartment. It has a foundation that is failing in several locations. It will not fall over but if they make any improvements and try to add an apartment, that foundation would need to be fixed. They also looked at attaching the apartment to the garage which would be clearly allowed based on North Berwick's Ordinance. However, because of the foundation problems and the drainage that are causing the foundation problems, these would also need to be fixed. All of this was out of the scope with their budget to do any of that work today and Andrea needs a place to live going into early next year. Mr. Lee stated that there is also a very large maple tree at the back of the barn which is the obvious place where you would try to attach the apartment. They would prefer to not cut it down but also it would cost about \$4,000 to do so. Mr. Lee said that they looked at the southern side of the barn but there is not enough room to meet the setbacks. They also looked at the north side of it, but the foundation and drainage issues did not allow for that. Also, with the way that the house is built, there is not enough room to go on the northern side because it would block access to the back field. Also, they have a lot of windows looking out from their kitchen and it would cut off great views looking out into the field. It would also prevent a potential expansion that Luke wants to do. He wants to expand the kitchen and living room in the future because they have an expanding family.

Mr. Lee reviewed the reasons why they believe they meet the requirements for our Ordinance.

Requirement #1:

The initial use of the apartment is for the care of in-laws. The apartment can continue to be utilized by the property owner after the care of the in-law has ceased provided all other requirements of this section are met.

Mr. Lee stated that it is being used for Luke's mother. He said that although the Ordinance states that it can be used by the property owner after that, they have no intention to do that.

Requirement #2:

The apartment shall be accessory to the use of the premises as a single-family dwelling and only one apartment shall be created accessory to the single-family dwelling.

Mr. Lee stated that they are only creating a 1-bedroom apartment.

Anne Whitten asked what accessory building that is already on the property was this apartment being attached to. Mr. Lee said that there is not an accessory building on the property today, but they are going to build one. He states that the bylaw does not say that it has to be a pre-existing accessory structure. It is very specific in saying that it needs to be attached to an accessory structure. The Zoning Bylaw also does not define accessory structure so it can be a detached garage or a detached shed. It also doesn't specify that an accessory structure has to be on a full foundation. They are not proposing to put it on a full foundation because of the costs. They were just going to do a standard shed base. Mr. Lee stated that, using a shed was a way to make this compliant with the Zoning Bylaw and make it work for the family's budget and create a space that is truly accessible. By building it above a garage or a 3rd floor, it is not feasible for someone that is going to live in it in their 80's. If they have issues where they can't go up the stairs, they will need to spend a lot of money to put in a chair lift to get up there or even more to put in an elevator.

Anne Whitten stated that before the applicant went any further, she would like to ask the Board to make a motion to table this so they can get the attorney's thoughts on this. She stated that the way they are proposing this project is not really the way that it was set up to be done with the Ordinance. The Board originally set it up so that people could have accessory buildings. They didn't set it up so that people could build a shed and then say that they are going to build a house next to it. This is what appears to be happening with this application. They are building a shed and then they are going to build a house which is actually 728 sf. Our Ordinance allows only 650 sf in town. David Ballard asked if there was any documentation from Dwayne or the attorney discussing this issue. Anne Whitten said that there was no documentation from Dwayne. Mr. Ballard agreed that we need to have it verified as well.

Acting Chairman Morse stated that they cannot put a building, an addition or anything on an existing structure unless they do the exact same foundation that is on the existing structure. He said that if they were going to do a frost wall on the new addition and they are going to attach it to a shed, then the shed also needs to have a frost wall. He said that if the shed is on a slab, the building needs to be on a slab. If the shed is on post, the building needs to be on posts. Acting Chairman Morse stated that this has never been brought up in this way before. He believes that they need some legal representation to verify and interpret the Ordinance correctly. Mr. Lee stated that they have had that done in other towns where the attorneys have reviewed and luckily it is usually in the homeowner's favor. They have no problem with the Board requesting a review.

Mr. Lee would like to discuss the square foot difference. Acting Chairman Morse said that is

another question that he has. He said that when you talk about the size of the building, you talk about the exterior dimensions of the foundation and not the exterior dimensions of the building. He considers the livable area to be the foundation size. If the foundation is 24 x 24, the building is probably 24.5 x 24.5 because of things like siding and eaves. He doesn't know how they are supposed to define living space. Do they need to deduct the 2x6 partitions around the outside of the building? Mr. Lee said that it is calculated the way an appraiser calculates living area in an existing home. New construction is typically quoted as exterior wall to exterior wall. He thinks the reason they do that is to push the square footage price lower in their favor. When they read the Bylaw, it seemed clear to them that the exterior walls are not a habitable area so they calculated it like an appraiser would by using the interior room sizes.

Anne Whitten feels that the attorney would need to review this as well. She told the applicant that she is not against their application, but she needs to know that what the Board will end up telling the applicant is correct so if this comes before the Board again, they will know the correct answer. Mr. Lee agreed. He said that it protects everybody.

Anne Whitten motioned to table the application for Luke Robertson to build an In-Law Apartment until the next meeting, so they talk to the attorney about the application of the accessory building and regarding the square footage calculations. Mark Cahoon seconded the motion. VOTE: 5-0

David Ballard asked for some clarification. He stated that the shed is not currently on the property. Are they planning on building the shed and then build the apartment on the side of it? Mr. Lee stated that, because the Bylaws do not have a pre-existing rule, they would do it at the same time. Anne Whitten stated that she will also be asking about the deck to see if it is allowed. She said that the intent of the Ordinance was for a relative that needed a place to stay could have a place to stay. It was not intended to build some sort of condo that she can live in that is on the property. Mr. Lee said that this is the interesting thing that he has seen in doing these accessory apartments in different places. The parents are selling their homes and using the funds to do these. The most common thing that he has heard is that they do not want to share a wall. They want to be neighbors with their children, but they don't want to share a wall. Anne Whitten stated that if they do it that way, people are technically putting 2 homes on a piece of property that is not big enough to have 2 homes. If it was the law that if you have 5 acres and you could have 2 houses on 5 acres than it wouldn't be a problem. They have home on 3 acres but are now trying to put 2 homes on 3 acres and the Ordinance won't allow this.

4. Other Business:

There is no other business at this time.

5. Adjournment:

Anne Whitten motioned to adjourn the meeting at 7:15 pm. Scott Strynar seconded the motion. VOTE: 5-0

Dwayne Morin,
Acting Planning Coordinator

Respectively submitted,
Susan Niehoff, Stenographer

Chairman Geoffrey Aleva

Jon Morse

Anne Whitten

Approved at May 27, 2021 ZOOM meeting

David Ballard

Approved at May 27, 2021 ZOOM meeting

Scott Strynar

Approved at May 27, 2021 ZOOM meeting

Mark Cahoon

Approved at May 27, 2021 ZOOM meeting