



OFFICE OF THE
BOARD OF APPEALS
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Approved
January 28, 2010

**Deshler Hearing Continuation Minutes
September 17, 2009**

Members Present: Ted Gaudette, Clerk and Acting Chairperson
Judy Thompson, Member
Al Horton, Associate Member
Leo Tometich, Member
Lisa O'Connell, Secretary and Associate Member

Members Absent: Josh West, Chairperson
Alice Ekstrom, Member
Gerald Mead, Associate Member

Others Present: Suzanne Deshler, applicant
Rex Ingram, Ingram Architects

This meeting is a continuance from the hearing opened on May 28, 2009 and continued on July 9, 2009 and August 20, 2009 regarding the application of Suzanne Deshler for the property located at 55 Lower Dam Way, Dunstable, MA for a special permit to add an in-law apartment to the existing residential structure on a non-conforming lot and a variance from the dimensional requirements of the Dunstable Zoning By-laws. See sections 6.2(g), 4.2, 4.3 and 11.1.

In the absence of Josh West, who chaired the August 20, 2009 hearing continuation, Clerk Ted Gaudette acted as Chairperson, as he did on May 28, 2009 and July 9, 2009 and reopened the hearing at 7:03 p.m. acting under the Mullin rule statute (M.G.L. Chapter 39: Section 23D). Ted Gaudette read the hearing continuation notice as posted for the record. Mr. Gaudette asked Mr. Ingram, the Deshler's architect, to update the board on the findings of the Board of Health.

Rex Ingram presented two different plans to the Board. He stated that the petitioner prefers the original plan as it is less invasive than the optional new plan labeled 'Plan B'.

Ted Gaudette asked if the additions on both plans were the same size.

Mr. Ingram said that the original plan is smaller in new construction than plan B, but the actual square footage of the in-law apartment would be exactly the same. In plan B, they would simply use less of the existing house as part of the apartment.

Ted Gaudette asked if the petitioner discussed both options with the Board of Health.

Mr. Ingram said their surveyor, Stan Dillis, had more testing to do on the property.

Ted Gaudette asked if the designs were acceptable to the Board of Health.

Rex Ingram said yes. He had spoken with Bridget Braley at the Nashoba Board of Health about the engineer's test pits and the design of the system. He said they are requesting a variance from the Dunstable Board of Health, but it would make a difference whether they would go with the original plan or the modified plan (plan B) as the issue is the increased square footage.

Ted Gaudette asked if the driveway was placed over part of the septic system and if there was another option for the driveway.

Rex Ingram said there wasn't another option for the driveway, but it was acceptable the way it was designed.

Lisa O'Connell asked if they were keeping the existing well.

Rex Ingram said yes.

Ted Gaudette asked about the setbacks.

Rex Ingram said the setback would be 10'4" at the shortest point on the East side of the property with the original plan.

Ted Gaudette asked what it was now.

Rex Ingram said 27'6". He said it was a unique site for the in-law suite in that the dwelling will maintain more of a single family residence appearance with the original plan. The alternate plan is a good scheme, but their preference for the original plan is because it has less impact to the neighborhood.

Ted Gaudette said he appreciated their concern for the impact to the area, but at some point the property could change hands and the board must be consistent in their decisions according to the by-laws. He said the addition would be a nice improvement to the neighborhood in either location.

Al Horton read and cited DZBL section 4.2 which states a change or alteration to an existing non-conforming property cannot make the property more non-conforming. The original plan would make the property more non-conforming with the 10'4" setback, but plan B would not with a 40' setback.

Lisa O'Connell asked about the difference in septic designs between both plans.

Rex Ingram said the plans would be alike in location, but with plan B, the design would be elongated.

Lisa O'Connell asked if the well would be kept in its same location with both plans.

Rex Ingram said yes.

Lisa O'Connell asked about the walkway or drive on the East side of the property and what would be done with it.

Rex Ingram said it is presently a 4' path for a boat launch and it will be removed.

Judy Thompson asked if plan B is larger.

Rex Ingram said the apartment is the same layout and size, but with the original plan they would use more of the existing house.

Judy Thompson asked if the attached shed was presently accessible from the outside.

Rex Ingram said, no, you'd have to go through the enclosed porch.

Lisa O'Connell asked if any of the patio area would be kept with plan B.

Rex Ingram said he wasn't sure. They hadn't gotten as far as landscaping with the alternate plan.

Lisa O'Connell said that the original plan might not be more detrimental to the neighborhood, but it is more non-conforming.

Leo Tometich asked if the driveway was private.

Rex Ingram said no, there is an easement for the adjacent property. It is like a common drive for both properties.

Ted Gaudette asked if they had a copy of the deed showing the easement.

Rex Ingram said no.

Rex Ingram restated that with plan B they would be increasing the size overall and impact the neighborhood more than with the original plan, which would keep it smaller and have less of an impact.

Lisa O'Connell asked if the septic would interfere with the driveway and the easement.

Rex Ingram said they could move the driveway over towards the concrete pad if necessary.

Ted Gaudette stated the petitioner had two options: the petitioner could proceed with the request for a variance and risk being denied. They would then have to wait to come back before the board; or they could withdraw their request for a variance without prejudice by a vote of the board and proceed with plan B, asking the Board for a finding according to DZBL section 4.3 that the changes, alterations or new construction would not be more detrimental to the neighborhood.

Rex Ingram said they would like to ask the board to withdraw their petition for a variance and proceed with plan B and a finding by the board.

Al Horton motioned to vote to accept the petitioner's request to withdraw their request for a variance without prejudice. Judy Thompson seconded the motion and all were in favor of the petitioner's request.

Ted Gaudette said based on the information provided and the plans for the alternate location of the in-law apartment, the Board could vote whether Plan B was more detrimental or not more detrimental to the neighborhood according to section 4.3 of the DZBL.

Al Horton motioned to vote as to whether Plan B would be more detrimental or not more detrimental to the neighborhood. Leo Tometich seconded the motion and the secretary called the roll:

Leo Tometich – not more detrimental
Judy Thompson - not more detrimental
Al Horton - not more detrimental
Ted Gaudette - not more detrimental

Ted Gaudette asked for Lisa O'Connell's vote:

Lisa O'Connell - not more detrimental

The motion carried unanimously.

Ted Gaudette reviewed the details of the in-law apartment in order for the board to vote on the special permit requested according to the new location of the apartment.

Ted Gaudette asked if the apartment would have a separate kitchen.

Rex Ingram said yes.

Ted Gaudette asked if the apartment would have separate interior bath and toilet facilities.

Rex Ingram said yes.

Ted Gaudette asked if there would be an adequate heating system.

Rex Ingram said yes.

Ted Gaudette asked if the relation of the occupants of the in-law apartment would be by blood or marriage to the principle residence occupants.

Rex Ingram said yes. It would be the petitioner's mother and uncle.

Ted Gaudette asked if the principle residents would remain principle residents as long as the related occupants of the in-law apartment are living there.

Rex Ingram said yes.

Ted Gaudette asked if there would be a separate entrance to the in-law apartment provided from the outside.

Rex Ingram said yes.

Ted Gaudette asked if the outside appearance of the premises would remain that of a single family residence.

Rex Ingram said yes.

Ted Gaudette asked if there would be written evidence by means of the Dunstable Board of Health approval verifying the adequacy of a water supply for both drinking and sewage disposal.

Rex Ingram said yes, they are in the process of working with the town's Board of Health and will have approval before applying for the occupancy permit.

Ted Gaudette asked if all turnaround and parking areas would be provided on the lot.

Rex Ingram said yes. There would be at least three parking spots on the property.

Ted Gaudette added other considerations by the board. There will be adequate access for the easement.

Rex Ingram said yes.

Ted Gaudette asked how many forms of egress there would be from the apartment.

Rex Ingram said 2.

Ted Gaudette said the occupants of the in-law apartment could not exceed three people.

Rex Ingram said there would be 2 occupants at most.

Ted Gaudette informed the applicants that use and occupancy of any such apartment other than is authorized by the board shall be grounds for revocation of any permit granted.

The permit must be acted upon within two years of approval.

The Special Permit DOES NOT transfer with the sale of the house and property, for which it may be granted.

The applicant must file this Special Permit with the North Middlesex Registry of Deeds and provide proof thereof to the Town Clerk of Dunstable.

An appeal of the board's decision may be made within twenty (20) days after the date of filing of a Notice of Decision in the office of the Town Clerk.

Al Horton motioned to vote to grant the special permit for an in-law apartment to the petitioner for the approved location by the board. Judy Thompson seconded the motion and the secretary called the roll:

Leo Tometich – to grant
Judy Thompson – to grant
Al Horton – to grant
Ted Gaudette – to grant

Ted Gaudette asked for Lisa O’Connell’s vote:

Lisa O’Connell – to grant

The motion carried unanimously.

Leo Tometich motioned to close the hearing. Al Horton seconded the motion and all were in favor. The hearing was closed at 8:15 p.m.