

Minutes
Hill Zoning Board of Adjustment
18 March 2008

Board members present: Robert Helmers, Gerry Weinert, Shaun Bresnahan
Applicant: Michael and Michele Munson
Public: Lucy Natkiel

Meeting was opened at 7:00 p.m. Bob Helmers was elected chair of the board. No other positions were filled.

The public hearing for an appeal of an administrative decision by Michael and Michele Munson opened at 7:07 p.m. The Munson's are appealing a decision by the board of Selectmen that an existing structure on a large lot in the rural residential district is a residential dwelling. The applicants state that the structure was designed as an office building accessory to a primary residence. The office structure was built before the enactment of the zoning ordinance in 1988. The primary residence was never built. The applicants lived in the structure for a few years around 1990. They have lived outside the town for the intervening years and now wish to construct a primary residence on the site and move back into the town. The selectmen denied the building permit, citing the existing structure as a residential dwelling, and two dwellings are not allowed, except by special exception.

The Munson's presented a letter from an abutter, Charles and Rose Cox, stating that they did not object to the Munson's adding a home to the property. Lucy Natkiel, abutter, also did not object and stated that she could attest that the original intention was for this structure to be an office building.

The structure is located on a 21 acre lot in a remote area of the town. It is approximately 500 sq. ft. with a loft over half of the floor area. It has a toilet, bath, a small sink, wood stove and gas heater. There are no closets. The structure is connected to a septic system. Mr. Munson stated that they had considered the alternative of obtaining a special exception, but that the state would require them to add another septic system or improve the existing one. If the existing structure were an office building, then the septic system would be adequate. Adding on to the existing structure is not feasible due in part to the slope at the site and nature of the structure. A better location for a home is situated about 100 feet away.

In the discussion that followed, the board considered that although the present intention is to use the structure as an office accessory to the primary residence, when the property is sold or transfers ownership, that the structure could then be used as a rental or in-law apartment. The structure has all the necessities of a dwelling including the septic. Mr. Munson acknowledged that the building could be lived in. It would be difficult for the town to monitor the use of the structure, despite stated intentions. The definition of dwelling was considered. The presence of a septic system in effect makes the structure habitable. The board also considered that the structure is extremely small, amounting to a cabin or cottage and is probably not adequate as a primary residence, and that it is not likely that the property could be sold as a residential property. There are other lots in the town that also have a primary residence with accessory buildings used as workshops or offices, including Mrs. Natkiel's. Most of these are believed to precede the zoning ordinance. The Munson's noted that had they built the primary residence first, they would not likely had difficulty obtaining a building permit to construct the workshop or office. The Chair noted that he had advised the Munson's to seek an appeal of an administrative decision, but that they could just as likely have requested a variance and the board should consider both

alternatives. Given the size of the structure and the septic system, the board was wary of defining this structure as a non-inhabitable as that decision would bear on any future cases of this nature. A compromise was suggested that deed restrictions be placed on the use of the structure, not allowing its use as a dwelling. The applicants agreed to the proposed deed restrictions. The deed restriction would provide the town recourse if the structure is found to be inhabited. The hearing was closed at 7:43 p.m.

The board deliberated. Given that the structure is very small and not adequate as a primary residence and also that the structure precedes the zoning ordinance, the board agreed to grant the appeal provided that deed restrictions were placed on the structure prohibiting its use as a dwelling. The following motion was passed: The existing structure presented in the application will be deemed a non-residential structure. Use will be accessory to a primary residence and a building permit for a primary residence on this property may be granted by the board of selectmen. Condition: A deed restriction duly recorded at the Merrimack County Registry of Deeds stating that the structure "is not to be used as a dwelling and is to be used only for uses accessory to the primary residence" needs to be presented to the board of selectmen and zoning board prior to the granting of a building permit.

The public hearing for Gary Fouts variance request from Article V Commercial Section D residential density of the zoning ordinance was opened at 8:02 p.m.

In attendance: Mr. Gary Fouts

The building currently has two one-bedroom apartments and two two-bedroom apartments. The lower floor is approved for use as a restaurant. Mr. Fouts would like to add an additional two-bedroom apartment in the space approved for the restaurant. The acreage of the lot is insufficient for five dwellings as per the zoning ordinance. The lot has approximately 19,500 square feet, but five apartments would require 25,000 sq. ft. Mr. Fouts has not been able to come up with an alternative to the restaurant space that is economically viable. The property, located in the commercial district is surrounded by land owned by the Town of Hill and has an easement over part of the adjacent town owned land for septic loading. The septic design is sufficient for five apartments and the property has ample off-street parking.

The board considered the variance criteria and believed there would be no decrease in surrounding property values. The site had adequate off-street parking, septic, is located in the commercial zone and screened from nearby residential areas and was not likely to be contrary to the public interest of preventing overcrowding. The site provides low-income housing for the town. The board felt the proposal did not violate the spirit of the ordinance as residential uses are allowed in the commercial district. An additional apartment in the building would likely go unnoticed.

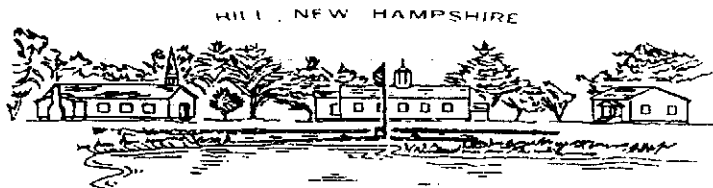
The hearing was closed at 8:35 p.m. and deliberation began immediately. The board did not anticipate that there would be any affects to the town if a fifth apartment were allowed. Adjacent areas are all town owned and there is adequate space between buildings, reducing effects associated with overcrowding. The site has adequate off-street parking and the septic system is more than adequate for five apartments. Two of the existing apartments are very small one-room economy apartments, currently occupied by single persons. A re-shuffling of apartments means that granting the variance equates to the addition of one small economy apartment, that is likely to be inhabited by single persons and is not likely to result in more school age children or an increase in demand for town services. Considering the unique features of the property and the

small increase in housing capacity, the variance was granted. The condition that on-street parking be limited to four parking spaces was added.

Meeting adjourned at 8:50 p.m.

Robert Helmers
ZBA Chair

Town of Hill
Zoning Board of Adjustment
P.O. Box 236
30 Crescent St.
Hill, NH 03243



NOTICE OF DECISION

Case No: V-55 Fouts

You are hereby notified that:

a variance of Article V: Commercial District Section D Residential Density as requested by Mr. Gary Fouts to allow five apartments on a lot on Commercial Street (Tax map V-55)

has been **GRANTED**, subject to the conditions listed below, by the affirmative vote of at least three members of the zoning board of adjustment.

CONDITIONS:

1. on-street parking is to be limited to four parking spaces

Robert Helmers

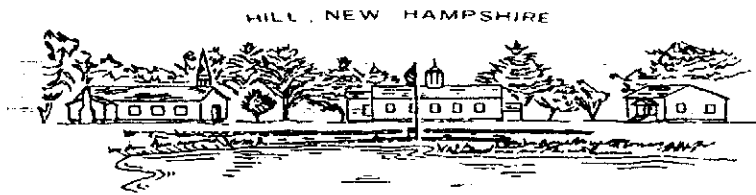
Chairman,
Board of Adjustment

21 March 2008

Date

Note: The selectmen, any party to the action or any person directly affected has a right to appeal this decision. See New Hampshire Revised Statutes Annotated, Chapter 677. This notice has been placed on file and made available for public inspection in the records of the ZBA. Copies of this notice have been distributed to: the applicant, Board of Selectmen and Town Clerk.

Town of Hill
Zoning Board of Adjustment
P.O. Box 236
30 Crescent St.
Hill, NH 03243



NOTICE OF DECISION

Case No: R13-18-01 Munson

You are hereby notified that:

an appeal of an administrative decision by Michael and Michele Munson regarding the classification of a structure on their property located on Currier Road (Tax map R13-18-01) as a residential dwelling

has been **GRANTED**, subject to the conditions listed below, by the affirmative vote of at least three members of the zoning board of adjustment.

The existing structure (presented in the application), of approximately 500 sq. feet will be deemed a non-residential structure. Use of the structure will be accessory to a primary residence and the board of selectmen will grant a building permit for a primary residence on this property.

CONDITIONS:

1. A deed restriction, duly recorded at the Merrimack County Registry of Deeds, stating that the structure "is not to be used as a dwelling and is to be used only for uses accessory to the primary residence" must be presented to the board of selectmen and zoning board prior to the granting of a building permit.

Robert Helmas

Chairman,
Board of Adjustment

21 March 2008

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