

Town of Milford
Zoning Board of Adjustment Minutes
February 17, 2011
Case #1-11
Germaine Hopkins
Special Exception

Present: Steven Bonczar
Kevin Johnson
Fletcher Seagroves
Laura Horning
Steve Winder

Zach Tripp - Alternate

Absent: Katherine Bauer – Board of Selectmen representative
Michael Unsworth - Alternate

Secretary: Kathryn Parenti

The applicant, Germaine Hopkins, along with Megan Hopkins, owners of 5 Westview Terrace, Map 21, Lot 15, Residence “A” district, are requesting a special exception from Article V, Section 5.02.2:A.13 to permit an accessory dwelling unit at the above address.

Motion to Approve: _____

Seconded: _____

Signed: _____

Date: _____

Steven Bonczar, chairman, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinances and the applicable New Hampshire statutes. He continued by informing all of the procedures of the Board; he then introduced the Board. He read the notice of hearing into the record as well as the list of abutters; Germaine Hopkins, applicant and owner of 5 Westview Terrace and Vivian Sarlo of 12 Granite Street were present. He invited the applicant forward to present her case.

G. Hopkins stated she was before the board to ask them to identify her living space as an accessory dwelling unit (ADU). There will be no external or internal changes to the existing home. She continued by stating a 1450 square foot addition was constructed in December 2005. Her daughter had recently had triplets and they needed the additional space. She lives in the new space and her daughter and grandchildren live in the main house.

S. Bonczar noted the current size of the space exceeds what is allowed with an ADU.

G. Hopkins replied she would build a false wall in her bedroom to use up 42 to 50 square feet to meet the ADU standards of 700 square feet. She was told by Dana MacAllister, Residential Building Inspector, the code requires a door to be in that wall. She noted if there is a door, it would become livable space. She stated she is willing to construct the wall and put the door in.

S. Bonczar read from the Town of Milford Zoning Ordinance, Article IV, Section 4.01.0 – Definitions: “*Accessory Dwelling Unit (ADU): A second, accessory dwelling unit incorporated within an owner-occupied existing or proposed single family home or detached accessory structure. The total area of the accessory dwelling unit shall not exceed 700 SF and shall include not more than one bedroom. Use of the existing curb cut is required and any additional parking should be accommodated by the existing driveway or to the side or rear of the property. (2008)*” Finally, he read from Article X, Section 10.02.6: “*Accessory Dwelling Units (2008): A. In all cases involving an Accessory Dwelling Unit (ADU), the Board of Adjustment in addition to the criteria contained herein shall consider the following requirements: 1. The primary dwelling unit shall be owner occupied. 2. The ADU must be developed in a manner which does not alter the character or appearance of the principal use as a single family residence. 3. The ADU is intended to be secondary and accessory to a principal single-family dwelling unit. 4. The ADU shall not impair the residential character of the premises nor impair the reasonable use, enjoyment and value of other property in the neighborhood. 5. Only one ADU shall be allowed per a property. 6. The ADU shall not exceed 700 SF total space. 7. The ADU shall include no more than one bedroom. 8. Adequate off-street parking must be provided. 9. No additional curb cuts shall be allowed. 10. Any necessary additional entrances or exits shall be located to the side or rear of the building whenever possible. 11. Attached accessory dwelling units shall be designed to allow for re-incorporation into the principal dwelling unit. 12. Attached accessory dwelling units shall have and maintain at least one common interior access between the principal dwelling structure and the accessory dwelling unit. 13. An ADU shall be located in an existing or proposed single family home or detached accessory structure. 14. All criteria of the zoning district including lot sizes, frontages, yard requirements and height requirements must be met. 15. An existing nonconforming residential use shall not be made more nonconforming. 16. An ADU must meet all current local and State Building, Fire and Health Safety Codes. B. All ADU’s must apply for a certificate of compliance every five (5) years and when a change of ownership occurs, to ensure the primary dwelling unit is owner occupied. C. Existing Unpermitted Accessory Dwelling Units: Unpermitted Accessory Dwelling Units found to be in existence prior to the passage of this Section and are not legally non-conforming, must obtain Special Exception approval to continue to be occupied in accordance with the following criteria: (2010) 1. The ADU complies with all requirements in 10.02.6:A. 2. Prior to the Special Exception application being heard by the Zoning Board of Adjustment, a code compliance inspection is conducted by the Code Enforcement Department to determine compliance with all applicable building, safety, and health codes. 3. Within forty-five (45) days of the approval of a*

Special Exception to allow the continuation of an existing unpermitted ADU, the applicant shall complete one of the following: a. If the ADU has been found to meet all applicable building, safety, and health codes, or will need alterations that do not require a building permit, apply for a certificate of compliance from Code Enforcement based on the code compliance inspection; or b. If the ADU has been found not to meet all applicable building, safety, and health codes, and a building permit is required, the ADU must pass all required inspections and obtain a certificate of occupancy. C. Failure to obtain a certificate of compliance or occupancy for a prior existing unpermitted ADU shall be a violation of the Milford Zoning Ordinance and subject to enforcement action.”

S. Bonczar asked how she accessed the ADU.

G. Hopkins stated there was an entrance through the common space in the laundry and mudroom through a French door, through the garage into the mudroom, from the front door through the main house into the mudroom.

L. Horning asked if the mudroom/laundry room was common space.

G. Hopkins replied it was.

S. Bonczar asked about the installation of the door in the false wall.

G. Hopkins replied D. MacAllister said it was required through the fire code.

S. Bonczar thought it was so you don't have inaccessible dead space.

K. Johnson noted he had a problem with a comment made by the applicant; this was not a true ADU as the main house is not owner occupied.

G. Hopkins replied it was; she and her daughter are co-owners of the house.

S. Bonczar noted from the application, the applicant had met with the building inspector who then made recommendations and the applicant was now in the process of making the ADU comply. There will be a final inspection and the issuance of a certificate of compliance.

L. Horning asked about the inaccessible space that has a door.

G. Hopkins replied D. MacAllister shrugged his shoulders when asked about this; the wall was to be put up to eliminate a certain amount of livable space and if she puts a door in, she can use it for storage. She thought it was ridiculous to have to put the wall up.

S. Bonczar noted he was working with the applicant to make the ADU work; otherwise you would have to get a variance.

K. Johnson replied he understood the minimum size of the access to the space, 22"x30", was to comply with the fire code. In the drawing submitted with the application, the doorway is larger.

S. Bonczar replied the minimum size of the door was to prevent the complete closing off of the space, in case of fire. He read from D. MacAllister's memo: *“Although we would prefer the space be accessed through the main house, due to the roof framing there is no practical way to accomplish this; therefore access must be from the ADU.”*

G. Hopkins replied the bedroom is very large and this reduction is minimal.

L. Horning replied it was a small fix for a substantial problem.

S. Bonczar stated the ordinance was written to accommodate those who want an in-law apartment or to rent out the space; it allows a kitchen. It also gives the homeowner flexibility. He asked if there were any additional comments from the board or from the public; there were none so he closed the public portion of the meeting and asked the applicant to go over the criteria for a special exception.

1. The proposed use shall be similar to those permitted in the district:

G. Hopkins replied it is allowed by special exception.

2. The specific site is an appropriate location for the proposed use because:

G. Hopkins stated the addition to the house was added five years ago and allows an area to be used as an ADU.

3. The use as developed will not adversely affect the adjacent area because:

G. Hopkins stated the addition resembles other additions in the area.

4. There will be no nuisance or serious hazard to vehicles or pedestrians.

G. Hopkins replied there will be no additional people or vehicles to the property.

5. Adequate appropriate facilities will be provided for the proper operation of the proposed use because:

G. Hopkins stated the unit has its own kitchen and bathroom.

S. Bonczar asked if the board had any questions or comments; there were none so they went on to the discussion the criteria for a special exception.

1. Is the exception allowed by the Ordinance?

F. Seagroves replied yes; K. Johnson, L. Horning, S. Winder and S. Bonczar agreed.

2. Are the specified conditions present under which the exception may be granted?

L. Horning replied the conditions were present.

S. Winder agreed and the solution of the wall to block off space would bring the ADU into compliance.

F. Seagroves agreed.

K. Johnson did not agree. He felt the plans submitted do not meet the ADU requirements. The addition of the door in the blocked space makes it an accessible closet and makes the ADU oversized. He also had issues with the quantities of easily accessible shared access. He felt the bedroom being on one level and the kitchen being on another with access through shared space made the ADU larger than allowed and not compliant. S. Bonczar disagreed with the statements regarding the door to the blocked space. D. MacAllister's plans showed the minimum sized door, which is required by code. A larger door could be installed and he would assume the applicant and building inspector would prefer a larger one.

K. Johnson replied if it was a full sized regular door, it makes the space no longer a dead space and can easily be used as a closet.

S. Bonczar asked about his second issue.

K. Johnson stated the bedroom is on one level and the living and kitchen space are on a separate level and that is accessed by a large shared space which is part of the addition but is not distinctly separate from the ADU. There are two (2) separate spaces on two (2) floors that is being bundled into one (1) ADU.

S. Winder noted the shared mudroom is not livable space, in his opinion.

S. Bonczar agreed; it was part of the main house. He noted the ZBA has seen cases where the ADU is entered through a door on the first floor and then is accessed by stairs to the unit. In this case, you enter the unit through a room and then go up the stairs and into the ADU. That is his interpretation; he didn't have an issue because of the access. He read ADU requirement 12: "*Attached accessory dwelling units shall have and maintain at least one common interior access between the principal dwelling structure and the accessory dwelling unit.*" This ADU does.

L. Horning stated that was why she asked about the mudroom being a common space.

K. Johnson replied he did not have problem with the design but he has a problem with the unit and the zoning ordinance regarding ADU's when the homeowner no longer lives there. If the daughter was not the co-owner and the mother lives in the ADU, it would not be allowed. The daughter may not want to rent out the space to a stranger when there is that much space shared within the ADU aspect. The intent of the ordinance doesn't state that this is limited to an in-law apartment; it can be rented and in this plan, there is just too much shared space.

S. Bonczar felt the conditions are present for this request to be granted and K. Johnson is looking to the future. If the daughter or a new buyer wants to rent out the space, they could make modifications and they may need to come back before the board; this set up may not work out for someone else.

K. Johnson replied he was not necessarily jumping forward but an ADU is an ADU and as the plan shows, there is too much common space.

L. Horning stated the requirements for an ADU limit the size but doesn't quantify the shared common space.

K. Johnson replied, in essence, the ADU is only 264 square feet and has a shared bedroom because it's off the mudroom and doesn't need to be included in the ADU, and the ADU consists of the living room and shared bathroom with the kitchenette. It's all in what you conceive the ADU consist of.

L. Horning replied the ordinance addresses the ADU as 700 square feet and not what makes up that space or the shared space.

K. Johnson replied by what is written in the ordinance, they could even say the bedroom is off the main house and in this case, 264 square feet is the efficiency apartment. The ordinance doesn't say you have to have a bedroom or bath. Historically what defines the ADU is the kitchen and in this case, there is a 264 square foot efficiency apartment with a kitchenette and a living area.

F. Seagroves replied the ADU can only consist of no more than one bedroom.

K. Johnson said the ADU does not need to have one bedroom but that is the most that is allowed.

L. Horning stated this was subject to interpretation and do they quantify the closet as living space, with the door?

K. Johnson replied the measurements for the ADU are from the outer wall to the outer wall, as was done in a previous ZBA case.

S. Bonczar stated the requirement for access to the space is for it to comply with the fire code. He thought the board could make a condition that he would not agree to, that the access to the space can be greater than the minimum required size but less than a full door size. He also wondered, if there is a door in an ADU that opens to an attic, is the attic space to be considered part of the ADU?

S. Bonczar asked if there were any additional comments or questions; there were none so he called for a vote by stating that after reviewing the petition and after hearing all the evidence by taking into consideration the personal knowledge of the property in question, this Board of Adjustment member has determined the following findings of fact:

1. Is the exception allowed by the Ordinance?

K. Johnson – yes F. Seagroves – yes L. Horning – yes S. Winder – yes
S. Bonczar -yes

2. Are the specified conditions present under which the exception may be granted?

F. Seagroves – yes L. Horning – yes S. Winder - yes K. Johnson – no
S. Bonczar - yes

S. Bonczar asked if there was a motion to approve Case #1-11.

S. Winder made the motion to approve Case #1-11.

L. Horning seconded the motion.

Final Vote

L. Horning – yes F. Seagroves – yes S. Winder – yes K. Johnson - no
S. Bonczar – yes

S. Bonczar reminded the applicant of the thirty day appeal period.