

**Town of Milford  
Zoning Board of Adjustment Minutes  
July 21, 2011  
Case #12-11  
Charlotte True  
Special Exception**

Present: Kevin Johnson, Chairman  
Laura Horning  
Fletch Seagroves  
Steve Bonczar  
Michael Unsworth - Alternate

Absent: Steve Winder

Secretary: Peg Ouellette

The applicant, Charlotte True, owner of Map 38, Lot 76, 8 Lorden Dr., in the Residence "R" district, is requesting a special exception from Article V, Section 5.04.2:A.15 in accordance with Article X, Section 10.02.6 to permit an Accessory Dwelling Unit (ADU) at the above address.

**MINUTES APPROVED & SIGNED ON AUGUST 4, 2011.**

Kevin Johnson, Chairman, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance 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. Charlotte True, owner of Lot 76, 8 Lorden Drive was present. Abutters present were: William and Elizabeth Bannister, owners of 5 Lorden Drive, Milford; Patricia Christman, RVCBL Trust, owner of 14 Lorden Drive, Milford; Edward Dunn, owner of 159 Whitten Road, Milford.

Applicant's presentation: C. True stated she is looking for approval for an Accessory Dwelling Unit for her home.

S. Bonczar asked for a description of the location of the ADU.

C. True replied that it is on the top floor of the residence.

L. Horning inquired if the ADU is above the garage or above the main house.

C. True said it is above the main house and does not extend above the garage.

L. Horning asked where the entrances and exits are.

C. True stated that the front door of the residence is the entrance and exit.

L. Horning asked if the front door is the only exit and if it is strictly for the upstairs or does it access the whole house.

C. True replied that it accesses the common area and then you would go upstairs to the dwelling unit.

L. Horning asked if there are two separate entrances to the residence because the drawing shows another door.

C. True said that is to the basement.

S. Bonczar said one of the criteria that needs to be met for an Accessory Dwelling Unit is #12 – *an Accessory Dwelling Unit shall have and maintain at least one common interior access between the principal dwelling structure and the accessory dwelling unit.* He referred to the diagram and said he assumes the access noted leads down into a living area. He inquired if there is a door at the top of the stairs

C. True said yes.

S. Bonczar said that would be the door between the main living area and the unit.

C. True said yes.

S. Bonczar said therefore for Criteria #1 – *attached accessory dwelling units shall be designed to allow for re-incorporation into the principal dwelling unit* –the area could be re-incorporated into a master suite for example in the future, since it's just up the stairs.

C. True said yes.

F. Seagroves asked what is included in the shaded area on the drawing.

C. True said it is two rooms.

F. Seagroves asked who has access to those.

C. True replied both parties.

F. Seagroves stated if people upstairs have access to the two rooms, then that square footage should be included.

C. True said it would be shared as a common area.

F. Seagroves asked if she was told that by the Building Inspector.

C. True said she just read somewhere about common areas.

S. Bonczar said the ordinance does not state where to draw the line because it would be conceivable to have an ADU on the main floor of the residence. He said it appears that the access to the area is in the ADU. There is no access to the space except through the door and entering the ADU.

F. Seagroves said it didn't appear possible to put another door outside.

S. Bonczar agreed, saying that it where it gets into a gray area.

L. Horning agreed , saying you can't quantify a common space when the only person having access is the person residing in the ADU, unless the homeowner were to access the area as a gym or something of that nature.

C. True stated it would be possible to put a door at the kitchen.

S. Bonczar stated that would cut off the bath, leaving the problem of defining where the ADU is.

L. Horning stated that the bath can't be in the common area.

S. Bonczar said the reason for concern is that the unit could eventually be rented out and it is a question of where to draw the line.

L. Horning said there is specific criteria for square footage and, as S. Bonczar said, it can't be quantified as a common area. She asked the applicant if she understood what the Board is saying.

C. True replied yes.

M. Unsworth asked if the unit is already built.

C. True replied yes.

K. Johnson asked the Board if there were any further questions; and then opened the meeting for public comment.

W. Bannister of 5 Lorden Dr. came forward. He requested that the application be disapproved. He strongly favors trying to maintain the rural character of the neighborhood. Since he moved in, the Heron Pond School has been built across the street and with it, traffic and bus noise during school days. In addition, a special exception has already been approved for the applicant for a home business and, although that has worked out pretty well and is pretty quiet, nevertheless it is more activity during the day and occasionally on weekends. He stated that Gary Daniels who lives on Whitten Rd has been approved for a special exception for a home business. He also referred to activity going on at the applicant's residence with family members staying there from time to time and increasing traffic. He expressed concern that it will become a multi-family situation if the special exception is approved. He requested the Board disapprove the special exception.

C. True asked to speak and stated that when her family lived in the residence there were three children, herself and her husband, with nine vehicles owned among them. Currently she and her daughter and a niece who owns one vehicle are living there. She stated there is a lot less traffic now than when the entire family lived there.

P. Christman of 14 Lorden Drive spoke next. She stated that she lives on the same side of the street as Charlie and her concern is in protecting the interest of her own home. She agreed there is a lot of traffic, which doesn't bother her as much as the Bannisters' who are directly across the street from the True residence but Ms. Christman said she plans on selling in a few years since she is a recent widow and needs to protect her property. She expressed concern the True residence could be an apartment.

K. Johnson clarified that an ADU requires the owner of the property to live there; however, it does not have to be a relative occupying the ADU and can be rented out to a non-interested party. It is not a requirement of the ordinance that it be for a family member although, most typically, that is the case. That is the reason for the Board's concern about how the space is laid out and who has access to what.

P. Christman stated that Ms. True just informed her that she does not intend to sell which allays the concern somewhat because a strange family would not be coming in and doing what they want.

E. Bannister of 5 Lorden Road came forward. She stated that everything that goes on across the street at the applicant's residence affects them, even a car door shutting, because of the location of the houses. They have lived for several years with that house as a multi-family with so many people living there and she would strongly urge the Board not to approve this exception; they would like to go back to single family homes on their street.

E. Dunn of 159 Whitten Road brought up the special exception for the salon business and said he suffered most because of water situation. He asked if Ms. True sold her house, would her business be grandfathered in for the next buyer?

K. Johnson said no, only two special exceptions “go with the property.” The Milford Ordinance pertaining to home occupations states... *Any special exceptions issued hereunder shall automatically terminate when the applicant no longer resides in the dwelling unit.* The new owner would have to go through the entire process of applying for a special exception and meeting the established criteria for that special exception.

Mr. Dunn stated he agrees with others on the noise level and referred to a loud Mustang vehicle and a motorcycle driving up and down the street.

C. True said there is no Mustang or motorcycle at her house.

Mr. Dunn said he was referring to them as noise in general that exists on the street.

There were no further comments or questions and the public portion of the hearing was closed.

K. Johnson stated there were no other communications received regarding this case.

K. Johnson asked the applicant to go through the criteria for a special exception on her application.

**Description of proposed use:**

Accessory Dwelling Unit

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

Applicant stated the dwelling is residential and will fit in the residential district.

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

Applicant stated because it is a property in a residential neighborhood.

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

Applicant said it will not adversely affect the property because it is residential.

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

Applicant stated there will be no nuisance or hazard because it is residential.

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

Applicant said it will meet the criteria for an ADU.

K. Johnson opened the discussion of the criteria

K. Johnson read from the Town of Milford Zoning Ordinance; Article V, Residence R District, Section 5.04.2, under A. *By Special Exception* and under item 15: Accessory Dwelling Units are permitted. Additional criteria that Accessory Dwelling Units must meet are specified in Section 10.02.6, which K. Johnson read into the record: *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 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 non-conforming 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 ADUs must apply for a certificate of compliance every five (5) years and when a change of ownership occurs, to ensure compliance with the granted Special Exception and 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: 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 a 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.*

K. Johnson asked if there were any more questions or comments.

S. Bonczar asked for clarification that the space is not attic, but is actually a room.

C. True said that is correct.

L. Horning had no further questions.

F. Seagroves had no further questions.

M. Unsworth had no further questions.

The Board of Adjustment, in acting on an application for a special exception shall take into consideration the following conditions:

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

M. Unsworth said it is permitted by special exception.

F. Seagroves agreed it is permitted.

L. Horning agreed, saying the statute clearly states that an ADU is permitted under special exception.

S. Bonczar said yes, contrary to abutters' testimony and the abutters have the same rights as the applicant to put in an ADU based on the fact that it is permitted by special exception.

K. Johnson concurred that ADU is specifically permitted by special exception.

**B. The specific site is an appropriate location for the proposed use:**

F. Seagroves said yes. It is not changing the structure of the house already there, just the rooms inside.

S. Bonczar disagreed, saying he is not sure it's an appropriate location but it is not inappropriate.

M. Unsworth agreed with F. Seagroves that it is an appropriate location within the house.

L. Horning said according to the wording of the Ordinance, the specific site is in a residential area, no alterations are being done outside the building, and we don't find it to be a non-conforming property; so the site is an appropriate location.

K. Johnson agreed, this is referring to the location of the existing dwelling and since this is an existing dwelling, the application does meet the specific site requirements.

**C. The use developed will not adversely affect the adjacent area:**

S. Bonczar said with what is proposed, he doesn't see that it would adversely affect the adjacent area.

L. Horning said it is a complicated question. Building on what Board members have said, there is already an in-home business at this location but there is nothing disallowing an ADU in conjunction with an in-home business. The use as proposed, in her opinion, would not affect the area, in the way it's been proposed.

M. Unsworth said it would not affect the area, assuming they are using it as an ADU.

F. Seagroves agreed, saying the only thing making it an ADU is the kitchen. You could have the bedroom up there without a kitchen and people could still live there. With the addition of a kitchen it is now an ADU.

K. Johnson agreed, specifically as F. Seagroves stated. Since there are existing bedrooms there, the occupancy of people and associated vehicles would be there. What defines an ADU is the addition of a kitchen and as an ADU he sees it affecting the neighborhood no more than a guest bedroom on that floor.

**D. There will be no nuisance or serious hazard to vehicles or pedestrians:**

S. Bonczar doesn't see any. If there was an additional person living there, the driveway is more than adequate.

L. Horning agreed. With the layout of the lot she doesn't see any nuisance or serious hazard to vehicles or pedestrians. The Board can't speak to driving habits or loud vehicles, we can only address the parking, and other Ordinance requirements.

F. Seagroves agreed with L. Horning. There is plenty of parking. The Board can't control how people drive; they can only control what's going on at that location.

M. Unsworth agreed with L. Horning and F. Seagroves.

K. Johnson agreed. From the pictures provided, there is plenty of off-street parking for anyone who would be occupying the unit.

**E. Adequate appropriate facilities will be provided for the proper operation of the proposed use:**

M. Unsworth said everything seemed adequate with the square footage, and the applicant would have to meet inspections after this approval.

F. Seagroves went back to the issue of the common area and what to do with that.

K. Johnson agreed with F. Seagroves. As the design was submitted to the Board, he would say this is not an appropriate facility. By the nature of the access, and position of the doorways, it does not conform with the intent of the ADU. An Applicant can't get square footage by manipulating the floor plan without providing adequate necessary facilities.

S. Bonczar agreed but not with regard to this. He looks at adequate facilities as whether there are entrances and exits, and there is only one bedroom, etc. which he feels is adequately handled in # 16 that an ADU must meet all current local and State Building, Fire and Safety Codes. On the extra space called a common area, he feels that falls into whether conditions are present under which a special exception should be granted. He questioned whether the delineation of an ADU and the rest of the house is proper because of the door location. If that were attic space there would be adequate space.

L. Horning agreed with Steve, Fletcher and Kevin. We have to consider what is in the Ordinance and what the applicant is allowed to incorporate as part of the square footage. You cannot just change the layout by blocking off two rooms and saying they are common areas. It was clearly stated by the occupant that they are two rooms; we can't just call them common areas. That is not how the ordinance is written; there is too much square footage and the common area will not qualify according to the wording of the Zoning Ordinance.

K. Johnson asked if there was any other discussion on this application; there was none.

K. Johnson asked the Board if this is a special exception allowed by the ordinance.

M. Unsworth – yes; F. Seagroves – yes; S. Bonczar – yes, based on his previous testimony regarding 10.02. He feels all the criteria have been met and the exception is allowed; L. Horning –yes; K. Johnson said this is specifically called out as allowed by special exception – yes.

Kevin Johnson asked if the specified conditions under which a special exception may be granted.

F. Seagroves – no; S. Bonczar - no, again because the delineation of the ADU not including the fully finished room is incorrect. He doesn't see how, at some point, it could not be used as part of the ADU. There is not a clear delineation between the owner occupied portion and the ADU, so he would have to

include that additional square footage and it appears to be over the square footage requirements for an ADU; L. Horning – no; M. Unsworth – yes; K. Johnson – no.

K. Johnson asked if there was a motion to deny the application.

L. Horning made the motion to deny Case # 12-11.

S. Bonczar seconded the motion to deny Case #12-11.

K. Johnson called for a final vote, with a Yes vote being to deny.

**Final Vote:**

**Fletcher Seagroves –yes; S. Bonczar – yes; L. Horning – yes; M. Unsworth – no; K. Johnson – yes**

Case #12-11 was denied by 4 to 1 vote.

Kevin Johnson reminded the applicant of the 30 day appeal period.