

**Town of Milford
Zoning Board of Adjustment Minutes
July 16, 2015
Case #2015-11
William Kerr
Special Exception**

Present: Zach Tripp, Chairman
Fletcher Seagroves, Vice-Chair
Michael Thornton
Len Harten, Alternate
Kevin Johnson

Absent: Joan Dargie
Kathy Bauer, Board of Selectmen Representative

Secretary: Peg Ouellette

The applicant, William Kerr, owner of Map 36 Lot 114, 49 Briarcliff Dr, in the Residence “A” district, is requesting a special exception from Article V, Section 5.02.2.A:13 to allow an Accessory Dwelling Unit.

Minutes Approved on August 6, 2015

Zach Tripp, 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 and read the notice of hearing into the record. Applicant, William Kerr and his wife Maureen Kerr were present. The list of abutters was read. The following abutters were present: Pamela Jowders of 66 Valhalla Drive.

W. Kerr came forward to present his case. He put an addition on his house which was used as a hobby room, with the garage below and the bonus room above. It has been inspected and passed years ago. Two years ago they turned it into a place for their daughter to live. It has a driveway and two entrances – one to the driveway and one to the house. It has a living room, kitchenette, ¾ bath, and stairs going to the top floor, egress windows, and meets criteria for a bedroom. It has a walk-in closet. Boiler is up there. They want their daughter to be able to cook there. Only thing not there is a stove. He would like to put in a stove with proper permitting.

Z. Tripp said it was essentially built out as is and they want to get a permit for the stove, and the office said they need a special exception for a dwelling. There is a list of criteria for a special exception for an accessory dwelling, which he went through.

F. Seagroves said one of his questions was answered. There is an egress to the outside? Along the way from going to the main house.

W. Kerr said yes, there is an entrance door into the breezeway. There is a french door to the separate entrance completely. On each side of the building there is egress on the main floor. Top floor has egress windows that you can jump onto the porch and also out the window.

Z. Tripp asked if the breezeway was connected to the main house.

W. Kerr said it was.

Z. Tripp asked if you could walk from the main house into the breezeway and into the accessory dwelling.

W. Kerr said yes, and if you kept going you would go right into the driveway. He gave pictures to the board.

Z. Tripp asked if, in the picture, the steps as you go to the front door and down the drive are lit and if they plan to segregate parking.

W. Kerr said the steps are lit and there is a drive in front of the garage for four cars and as it goes along the side of the house that goes up to this apartment there is a driveway where you could put four cars.

Z. Tripp, pointing to the picture, asked which one was the apartment structure and where occupants would be parking.

W. Kerr said they pull up to the entrance to the porch which has the entrance to the apartment.

K. Johnson asked if they were asking all questions prior to discussing standards of the ordinance.

Z. Tripp said yes, and after answering questions they would open up for public comment.

K. Johnson asked what parts of the structure are served by the boiler room.

W. Kerr said just that building.

K. Johnson asked how they get from the living room to the bedroom.

W. Kerr said there is a set of stairs.

K. Johnson asked who has access to the large storage area in the sketch.

W. Kerr said it is off that bedroom. You walk up stairs to that bedroom and into the walk-in closet.

K. Johnson was referring to the storage area with the two doors, not the closet.

W. Kerr said it is a pitched roof that is cut off about 5 ft and everything behind that is not useful. There is a wall and the closet door, and storage behind it.

M. Thornton said it was a knee wall.

W. Kerr agreed.

K. Johnson said it looks like a false wall between the side of the closet and the side of the stairs.

W. Kerr said yes.

Z. Tripp asked for any other questions. There were none. He said under Sec. 10.02.6 there is a requirement for an ADU. He would go through and ask questions and have applicant give answers into the record.

Z. Tripp said an ADU shall meet the following requirements:

1. Only one ADU shall be allowed per property.

W. Kerr said yes.

2. The primary dwelling unit shall be owner occupied.

W. Kerr said yes.

3. An ADU shall not exceed 700 SF total space.

W. Kerr said yes, about 670.

4. The ADU shall include no more than one bedroom.
W. Kerr said correct.
5. No additional curb cuts shall be allowed.
W. Kerr said correct.
6. An attached ADU shall have and maintain at least one common interior access between the principal dwelling structure and the ADU consisting of a connector a minimum of 36 inches in width or a doorway minimum 32 inches in width.
W. Kerr said yes.
Z. Tripp said he has the breezeway.
K. Johnson said this was a detached ADU.
W. Kerr said it is attached by the breezeway.
Z. Tripp said no common wall.
W. Kerr said it doesn't share a common wall. It shares the breezeway. The house has two other screened in porches, so that will be his daughter's porch.
7. An ADU shall be located in an existing or proposed single family home, its detached accessory structures, or a stand-alone dwelling unit subordinate to the single family home.
Z. Tripp said this is an existing single family home. That would be moot.
W. Kerr said yes.
8. An existing nonconforming single-family residential structure or its detached accessory structure shall not be made more nonconforming.
Z. Tripp said the current structure is not nonconforming?
W. Kerr said it is not.
9. An ADU shall meet all applicable local and State building, fire and health safety codes.
Z. Tripp said the applicant is going through permitting.
W. Kerr said he is, and everything done to now has been inspected.
Z. Tripp continued reading, "The Board of Adjustment prior to granting a Special Exception shall conduct a hearing to determine if the proposed ADU complies with the following criteria." He asked the applicant to comment on these next five.
 - a. 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.
Z. Tripp asked if applicant felt the ADU would change the character or appearance of the single-family residence.
W. Kerr said not at all.
 - b. The ADU is intended to be secondary and accessory to a principal single-family dwelling unit.
W. Kerr said that was right.
 - c. 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.
W. Kerr said he didn't see how it would, it already exist.
 - d. Adequate off-street parking must be provided.
Z. Tripp said he had the extra driveway.
W. Kerr agreed.
 - e. An necessary additional entrances or exits shall be located to the side or rear of the building whenever possible.
W. Kerr said there is no front entry.
Z. Tripp said he installed French doors on the side.
Z. Tripp asked for further questions from the Board. There were none. He opened the public comment portion of the meeting.

Pam Jowders of 66 Valhalla Dr. came forward. She asked, if this was already there and approved, why was it necessary for Mr. Kerr to come for a Special Exception?

Z. Tripp said it was originally built as a hobby room and kind of acting as a bedroom. When he requested a permit for a stove then the Community Development office said it was no longer a hobby room. The stove would make it a permanent living space.

M. Thornton said Bill Parker said you are not allowed to sleep there. As soon as you sleep there and put in a stove. Sleeping there made it a residence. Not having the dwelling meant not having the stove and not sleeping there.

Z. Tripp asked if the applicant agreed. He did.

P. Jowders said she is part of the same site plan. She believed it said only single-family residences. It was restricted to what is built, how much you could build and use. Does the site plan not count anymore?

Z. Tripp believes ordinances take precedence over site plans.

K. Johnson said two factors. One depends on how the site plan is worded. If it specifically says single family residences, a house with an ADU is still considered a single-family residence, because our ordinance says an ADU is an accessory use. Also, many of the restrictions expire after a certain time. His neighborhood is 31 years old. It was restricted to no farm animals for first ten years, which has expired. Without seeing the actually site plan and restrictions recorded with it, there is no way of telling whether that would take precedence.

Z. Tripp said a criterion is that it shall be owner occupied in the primary dwelling unit.

P. Jowders said he could rent the apartment out if he wanted.

F. Seagroves said he has to live in the main house.

Z. Tripp said he can't move and rent the apartment.

P. Jowders said she had no problem with it, but just curious, if someone died or they weren't in that house, what happens; that is really two units.

K. Johnson said that is in the ordinance when the owner leaves the house for whatever reason, whoever buys the house has two options. Can either go through the recertification process for the ADU. Or, this is why Zach said there is common access between the two, it can be reabsorbed into the house and removed from the rolls as an ADU.

Z. Tripp asked for any further questions. There were none. He closed the public portion of the meeting and asked W. Kerr to read the application into the record.

W. Kerr read the application:

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

We are keeping it as a residential use and will be owner occupied.

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

It is an accessory to the house and already exists.

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

It will stay as residential and owner occupied.

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

The house is off the street and parking is off the street using the driveway.

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

Any applicable building permits will be pulled for this.

There being no further questions from the Board, Z. Tripp moved on to discussion of the criteria.

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

F. Seagroves – yes, an ADU is allowed use in Residence A.

L. Harten – yes, agreed. It is still basically single-family residence with ADU, which is allowed.

M. Thornton – seems to have met all criteria for acceptance as an ADU.

K. Johnson – yes, ADU is allowed by ordinance.

Z. Tripp – ADU is allowed by ordinance.

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

M. Thornton – yes – it is adjacent and connected.

K. Johnson – yes.

F. Seagroves – yes. The only thing being done is adding a kitchen.

L. Harten - yes, agreed.

Z. Tripp – agreed. Applicant did a good job adding the ADU. It is logical place above the garage and a breezeway to the house. He will get a bedroom there, and the right entrance and exits. He thinks it is an appropriate location.

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

F. Seagroves – yes, doesn't see it will change anything. As he stated, they are just adding a kitchen.

L. Harten – doesn't believe any adverse effect. Applicant has appropriate onsite parking and as F. Seagroves said, all they are doing is adding an area to cook in.

M. Thornton – same thing. Only addition is the stove, they could be using a cooktop or a little oven now without coming to the Board. Line between stove and those other units is infinitesimal.

K. Johnson – it would not affect since this is already existing building as part of the house structure and its accessory buildings.

Z. Tripp – agreed, it looks like it will be unchanged from when it was a hobby room. There is already a driveway in place. Doesn't see from the pictures it will be different to the neighborhood.

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

M. Thornton – No hazard at all. It is all on property, unless a pedestrian happened to be trespassing. No danger to the public at all.

K. Johnson – agreed, no way this would create a nuisance nor hazard to vehicles or traffic.

F. Seagroves – Everything already there. Driveway and parking are off the roadway.

L. Harten – doesn't believe there would be hazard to vehicles or pedestrians. Not adding many vehicles unless they have a lot of company and he has no problem with that.

Z. Tripp agreed, looks like appropriate steps for proper egress. There is off street parking with a separate driveway. He agrees with the board.

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

K. Johnson asked if they were going to go through the 15 criteria.

Z. Tripp said no, since he read them previously and applicant responded.

K. Johnson – in that case, no to this one. Based on questions and answers regarding boiler room which is to provide heat and hot water for the ADU, square ft has been excluded from the calculations, as well as stairs required to go from the living room to the bedroom. Without even addressing the access to the storage which in previous cases they did not take realtor ft., they took actual SF. He's at 744 SF, exceeds allowed amount for an ADU.

M. Thornton said his understanding you do not include boiler rooms and stairs. Nobody dwells in a boiler room or on stairs. In houses a basement, finished or not, is excluded.

K. Johnson said the hallways and stairways are included in the sq. footage of the house. They have addressed this number of times as to SF calculated in an ADU. Gross SF prior to adjusting for the slope of the roof, which they can't calculate from what they have, is almost 880 SF.

M. Thornton – doesn't know, based on Kevin's remarks. He will defer his answer.

F. Seagroves – yes, going by comments of the Code Enforcement Officer, which is 607 SF. He knows the case referred to by Kevin, a case with a wall like that. He would go with what Code Enforcement Officer said.

L. Harten – yes, adequate appropriate facilities will be provided for proper operation of the proposed use. He will also agree with Fletcher. The Code Enforcement Officer comment on page 3 that states the top floor, stairs and boiler room are not part of the Building Inspector calculations. Doesn't have a problem with SF and feels all appropriate facilities will be provided.

F. Seagroves referred to page where calculations were and Bill Parker's initials. He understands Kevin's concerns.

Brief discussion and comments followed re Kevin's concerns with excluding the stairs and boiler as part of the ADU, meaning you can't use them, and Bill Parker's initials on the calculations, suggestion was made to table the decision for consideration and input by B. Parker.

Z. Tripp and K. Johnson discussed common utilities vs. ones that are specific to the ADU. Another ADU case where a common hallway from one area of the ADU to the other and that common hallway put the SF over 700. Typically, there aren't stairs within an ADU.

Z. Tripp was looking at the wall; appears it was adjusted.

Applicant said that was so it couldn't be used as a second bedroom because it is too small.

Z. Tripp said someone could argue that isn't a closet, but part of the SF.

Applicant said he could dryall over that space.

K. Johnson said fire code wouldn't allow it. You have to have access to that space.

W. Kerr said you can access it but not use it for storage. If turned into dead space, it is not living space and it is about 4 f. 6 in, not heated or cooled.

K. Johnson suggested tabling the case to get clarification.

Z. Tripp said he was okay with tabling if the Board agreed.

M. Thornton made motion to table to consult with Bill Parker.

K. Johnson said not just Bill, but the Community Development Office, for clarification of what must be included and can be excluded from ADU Sq. ft. calculation.

Z. Tripp said for example, dedicated heating and stairs.

M. Thornton said they could ask for review of these drawings and see if it comes in or over the 700 SF.

K. Johnson seconded the motion.

Z. Tripp asked for vote on motion to table to the Community Development Office to clarify whether dedicated stairs and a dedicated boiler room should be included in the calculations of the 700 SF required by 10.02.6.A.1.C.

K. Johnson asked to add the storage space, even though there is the option to close it off.

Z. Tripp said motion made by M. Thornton, seconded by K. Johnson.

Final Vote on motion to table:

M. Thornton – yes

K. Johnson – yes

F. Seagroves – yes

L. Harten – no, he believes the Community Development Office has done an adequate job in assessing this ADU. If they table they would be wasting applicant's time and the Board's time.

Z. Tripp – yes, because this is a unique ADU.

Decision was to table.

Z. Tripp informed applicant that Community Development could probably do this quickly and put on agenda for the next regular scheduled meeting, August 6, 2015.