

**Town of Milford
Zoning Board of Adjustment
August 16, 2018
Case #2018-22
WTB Rentals, LLC
Variance**

Present: Steven Bonczar, Chair
Michael Thornton
Rob Costantino
Joan Dargie
Wade Scott Campbell, Alternate
Karin Lagro, Alternate
Laura Dudziak, Board of Selectmen Representative

Absent: Jason Plourde, Vice Chair
Tracy Steel, Alternate
Robin Lunn, Zoning Administrator

Secretary: Peg Ouellette

WTB Rentals, LLC, for property located at 37 Union Square, Milford, NH, Tax Map 26, Lot 184, in the Commercial District is seeking a Variance of the Milford Zoning Ordinances per Article V, Section 5.05.1.GG to allow for the conversion of a commercial unit in a mixed use building to a residential unit, changing the ratio of residential to commercial use from 3/2 to 4/1

APPROVED September 6, 2018

S.Bonczar, Chair, opened the meeting and introduced the Board members. He informed all of the procedures of the Board. One Board member was absent. Chair made motion to seat Wade Scott Campbell, Alternate, as a voting member. J. Dargie seconded. All in favor.

S. Bonczar asked who was representing WTB Rentals.

Jim Wetherbee of Wetherbee Plumbing & Heating came forward.

S. Bonczar asked him to tell what they were planning to do.

J. Wetherbee said his business was in the back of the building and he wanted to turn that into an apartment.

No parking, etc to run a business out of it.

W. Campbell asked about an entrance.

J. Wetherbee said he used to come into the back side of Kilkenny's.

W. Campbell asked if the garage there was an entrance.

J. Wetherbee said doors beside that. Two entrances into the apartment. In response to comment from M. Thornton, he said there were two egresses.

W. Campbell asked if it was door into the little alley.

J. Wetherbee said yes.

W. Campbell asked if there was one to the apartment and one to the business.

J. Wetherbee said both went to the business. Employees came in back side and there were two doors together – one into the garage and down the stairs, other side where you would enter the building.

S. Bonczar asked if there was a residence upstairs.

J. Wetherbee said there was a door up to a small room and up stairs. Apartment above.

R. Costantino said he had the business there before; why couldn't that be done now?

J. Wetherbee said there wasn't enough room for a business in that space.

J. Dargie asked about square footage.

J. Wetherbee said 610.

J. Dargie would be apartment.

J. Wetherbee said that could have been garage space.

J. Dargie asked if garage was accessible.

J. Wetherbee said it was pretty small. Ramp to the building where they stored stock and access to basement from that. Door at the bottom of the runway so no one could have access to the basement.

J. Dargie asked for something bigger than the plan he gave them.

S. Bonczar had one.

J. Wetherbee said, looking at the plan they measured all the rooms. He pointed out to J. Dargie the current garage and bathroom, office and kitchen area. Bathroom with office and living room with office. Also, former entrance to get to offices. Employees came through the garage.

J. Dargie asked for dimensions.

J. Wetherbee said it was huge.

S. Bonczar said it was long and narrow.

J. Wetherbee said larger plan had measurements. He passed it around.

R. Costantino had trouble understanding. It was a business and people could enter that way. It could still be a business.

J. Wetherbee said it could go either way. They knew they'd grow out of it so they built it to be an apartment some day. A business could try to run out the back but with the alley the way it was and with Kilkenny's in there [would be difficult].

R. Costantino said they'd have to park in the Oval.

J. Wetherbee agreed. Kilkenny's owned two spaces and parks there so no one could get in. Fish Bowl person has another space.

W. Campbell asked if he was saying employees couldn't park there.

S. Bonczar asked about residents.

J. Wetherbee said there were four spots on the side of the building. He rents spaces from Leighton White.

S. Bonczar asked if spots in the alley.

R. Costantino said they couldn't park there in winter.

J. Wetherbee agreed. They park there and in winter the dumpster can't get in.

J. Dargie asked if he had tried to rent it as a business.

J. Wetherbee said no.

K. Lagro asked how long it had been empty.

J. Wetherbee said six or seven years.

S. Bonczar referred to notes he had taken re this dwelling, mixed use. It was only in certain zones; Commercial, Limited Commercial, and ICI were three zones where you had combination of residence and non-residence use.

R. Costantino said applicant mentioned not being able to have signage. Did somebody tell him that?

J. Wetherbee said when his business was there he was told he could have a 3 x 4 off the side of the alley. Couldn't put it in front or back.

R. Costantino said there was similar sign on J's, under the Red Arrow. They also had a sign. Probably could see it more easily because of the wider road.

J. Wetherbee said that was actually a street; this was just a right of way.

S. Bonczar said it wasn't unusual to have a business in an alley. Many towns in tourist places have them. May not be the best location, but was possible. He asked for any other questions from the Board.

J. Dargie said adding up the sq. footage and it was bigger than 610 SF.

M. Thornton mentioned 4 x 8 bathrooms.

J. Dargie said she & W. Campbell were coming up with 900 SF.

J. Wetherbee asked if they were counting the garage.

R. Costantino said garage will be baths.

J. Wetherbee said no, baths were already there. In response to R. Costantino he said the garage was still a garage.

R. Costantino asked about any change to the exterior.

J. Wetherbee said only change would be to put in closets.

S. Bonczar asked for any other questions. Anything in the application they would like clarified or explained? He wasn't going to have applicant read the whole application.

J. Dargie still coming up with more than 610 SF. Where did they get that?

J. Wetherbee said when they drew it up they measured the rooms.

J. Dargie and W. Campbell said they left out the garage and the bath. Without the bath it was 776 SF. After brief discussion and looking at plan, J. Dargie said she didn't know how much difference it made, but with the space and two bathrooms they were talking multiple people and there would be more than one car.

J. Wetherbee said they had room for only one vehicle. If they had two they would have to keep one at Leighton's.

J. Dargie said it didn't matter, but they were looking at the paperwork.

J. Wetherbee said they could change note on it.

S. Bonczar said if they approved it they were approving allowing that to be there, period. No specific need for sq. footage limit.

M. Thornton said no sq. foot limit.

J. Dargie asked about the possibility they decided to take Home Town space and turn it into part of the apartment.

S. Bonczar said they were allowing a fourth unit, period.

W. Campbell asked if they'd have to go to the town [to make Home Town an apartment].

S. Bonczar agreed.

J. Dargie said it was all on the same floor, and attached. Trying to figure out sq. foot if you kept going and made it all one unit. How would that not happen?

K. Lagro said that was not on this application.

W. Campbell said there was no door to tie them together.

J. Dargie asked where Home Town Insurance was [on the plan].

S. Bonczar said in front of the living room.

J. Wetherbee said there was a stairway on the other side. Couldn't gain access upstairs.

M. Thornton said they couldn't go through a wall that way.

S. Bonczar said the unit he wanted to convert had a specific footprint. Calculation on the sq. footage was off, but sq. footage was on the plan.

K. Lagro said it was off because of the kitchen size, 8 x 11.

S. Bonczar asked if there was anything else. Nothing. He opened public comment.

S. Bonczar asked for any other questions or comments from the Bd.

K. Lagro asked applicant whether they had continual traffic when they had the business there.

J. Wetherbee said no, just people paying bills. It was difficult for trucks to back in, with Kilkenny's. They never parked there. Now they were not allowed to park beside that building. Can't get in there with a delivery truck. Trash man had to call Fish Bowl to move car.

S. Bonczar closed public comment and moved into discussion of the variance criteria.

Granting the variance would not be contrary to the public interest because:

S. Bonczar asked for Bd's opinion on this.
W. Campbell didn't think it would go against public interest. Pretty straightforward.
R. Costantino didn't see it went against public interest.
S. Bonczar didn't see any harm in granting. Didn't threaten public safety, health and welfare, or alter the character. Anybody seeing that might not be true?
M. Thornton said it would make better sense to have a residence than a business that would have to have trucks coming and going.
J. Dargie said many businesses, such as a book keeper, accountant, that were only one person in an office. As far as making it better, can't say that.
K. Lagro commented there was no place to put a sign.
M. Thornton said there were many places to put an office.
J. Dargie referred to S. Bonczar's comments about places like Portsmouth where you go down alleys and have a jewelry maker with a little sign.

If the variance were granted, the spirit of the ordinance would be observed because:

S. Bonczar said he was looking for their opinion in reading the ordinance and their opinion of the spirit of the ordinance and whether this met that.
J. Dargie said ordinance reason was to have two residences per one commercial. May have been something at one time they felt they needed that.
S. Bonczar wasn't sure if it was residence limited to commercial, or commercial limited to residence.
M. Thornton said there were no guarantees on what they were trying to achieve.
J. Dargie said on west end of town they were trying to make it more commercial. No plan to have a grill [outside]. No place for kids to play – can't send them out to play in an alley. From that perspective, that may be the reason they did it.
S. Bonczar said the Oval District was very mixed.
M. Thornton said not everyone had children.
J. Dargie said the Bd. had no control over that. Can't discriminate.
S. Bonczar said a lot of apartments above, commercial below, unlike other areas where you might have this sets of dwelling with mixed use. Further down Nashua St. with residences and offices out front. Big issue was parking. He said the applicant said there was room – not best solution, but possible. Businesses not open 24/7.
J. Dargie said they didn't have to worry about overnight parking.

Granting the variance would do substantial justice because:

M. Thornton said the guideline was that, beyond what the public had interest in protecting, that didn't intrude to the use of a citizen's property beyond what was in the town's best interest. They didn't know why it was done. It was just set down that this would be. No idea what they were trying to achieve.
S. Bonczar not sure he understood.
J. Dargie said he mentioned gain to the public.
M. Thornton said public interest was greater than the utilization.
S. Bonczar said if they denied it, the public interest, if not? How then substantial interest would not be done. It was probably consistent with current use. Didn't think public gain by denying was greater than applicant's gain. Thought what M. Thornton was saying was the ultimate purpose of this when it was put in back in 2012 wasn't quite evident and it took each member to interpret it.

Granting the variance would not diminish the value of the surrounding properties because:

W. Campbell didn't think so.
S. Bonczar saw no impact.
W. Campbell said it had been that way forever.
J. Dargie said it wouldn't look different.
S. Bonczar said Oval was very mixed use. That unit was probably itself mixed use. Not changing commercial character in the zone. Would be a loss to the public if it was.
M. Thornton said yes, because it was a store front.

Unnecessary hardship:

S. Bonczar referred to the first part of the question, that owing to special conditions of the property that distinguish it from other properties in the area. S. Bonczar said there were a few things to consider in whether or not there was a fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property; and whether the proposed use was a reasonable one.

R. Costantino had kind of a problem. It could be used as a business. Not ideally for a store front but could be used by lawyer office or accountant. Could have a sign in the alley. Would be small but on the other hand he wasn't sure it was not a good idea.

M. Thornton said it wasn't ideal.

J. Dargie said something that made it special apart from other buildings.

K. Lagro mentioned access.

S. Bonczar said could use as access.

J. Dargie said all the way down you had same in back of Eagle Hall.

R. Costantino said access was concern. Cars park on the drive side. People would have to switch cars.

S. Bonczar didn't know any other business in the area.

W. Campbell mentioned J's Tavern.

S. Bonczar said you could use it as business on one hardship. But question was whether or not by restricting it stringently to the mixed use, was there a hardship. Was there a relationship there that said they have to have this one commercial to two residences. In this case, this was operating beyond that. Not black and white re hardship. Could it be used for a business? Yes, but probably not because of access that presented a hardship. But looking at what mixed used and question whether applying that stringently to this, then it becomes a hardship. On the surface it was not. But laws changed over the years. Back in the '90's it was, could it be used or not; and if it could not there was a hardship.

J. Dargie said there was one on South St. adding another residence unit and it was allowed because it was going to be owner occupied. In that case there was plenty of parking and big space and more consideration of hardship.

S. Bonczar commented each case was different.

J. Dargie said that was why another residence unit was allowed. She was trying to work through applying it.

S. Bonczar said, looking at facts of this case and where it was located.

J. Dargie said it was more problematic to have a residence and then a business because of difficult access and no parking. People come into Town Hall all day asking where they are supposed to go when the winter parking ban was on. Trying to figure out if it was worse to have a residence or business there.

M. Thornton said either would have to have parking. There was intent on how many vehicles and where to park.

R. Costantino commented that they already said.

S. Bonczar asked if anybody felt there were specific conditions that went to hardship.

R. Costantino said only one space or one car allowed for the renter. That really took care of that as much as you could.

S. Bonczar said J. Dargie should think about the handbook which said the property needs to establish that because of the special conditions of the property, application of the ordinance provisions to his property would not advance the purposes of the ordinance in any fair and substantial way. He asked for comments.

R. Costantino said his opinion was it didn't matter, apartment or business. Accessibility made the hardship for him. It didn't affect it either way.

J. Dargie said if it didn't affect it either way, was that hardship?

M. Thornton said there was nothing owing to the property itself he could see that created a hardship.

S. Bonczar saw where they were coming from. He was on the fence, going back to the general purpose of the ordinance. By enforcing it to the letter, was there a hardship?

R. Costantino said he had said the opposite of what he meant a minute ago. When S. Bonczar read the explanation paragraph, it seemed like there was no hardship. He said something about whether it was reasonable.

S. Bonczar said a. & b. – two parts. Unnecessary hardship where “cannot use in strict conformance of the ordinance and there a reasonable use ...”

R. Costantino said this property was unique re alley access. Didn’t know of other businesses in town that were down an alley. It was unique.

W. Campbell agreed, the location. But if you looked at buildings in that area they were all unique in one way or another.

S. Bonczar agreed. Any other discussion? None.

S. Bonczar then proceeded to the vote on the criteria for a variance.

1. Would granting the variance not be contrary to the public interest?

R. Costantino – yes; J. Dargie – yes; W. Campbell – yes; M. Thornton – yes; S. Bonczar – yes

2. Could the variance be granted without violating the spirit of the ordinance?

J. Dargie – yes; W. Campbell – yes; R. Costantino – yes; M. Thornton – yes; S. Bonczar - yes

3. Would granting the variance do substantial justice?

W. Campbell – yes; M. Thornton – yes; R. Costantino – yes; J. Dargie – yes; S. Bonczar - yes

4. Could the variance be granted without diminishing the value of abutting property?

J. Dargie – yes; M. Thornton – yes; W. Campbell – yes; R. Costantino – yes; S. Bonczar – yes

5. Would denial of the variance result in unnecessary hardship taking the following into consideration:

J. Dargie – no; R. Costantino – yes; M. Thornton – yes; W. Campbell – yes; S. Bonczar – yes

S. Bonczar said based on the vote the criteria had been satisfied. The variance was granted by 4 to1 vote.

S. Bonczar informed applicant of the 30-day appeal period. There being no other business before the Board,

J. Dargie moved to adjourn.

R. Costantino seconded.

All in favor.

Meeting adjourned at 7:50 p.m.