



TOWN OF
BROOKLINE, NEW HAMPSHIRE
PLANNING BOARD

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PLANNING BOARD MEETING
Minutes
June 19, 2014

Present: Alan Rosenberg (voting)
Ron Pelletier, Member (voting)
Richard Randlett, Member (voting)
Brendan Denehy, Selectboard Representative (voting)
Eric Bernstein, Alternate (voting for Dana)

Absent: Valérie (Maurer) Rearick, Town Planner, Dana MacAllister, Co-Chair, and Judy Cook, Alternate.

Alan asked Eric to vote for Dana at this meeting. Eric agreed.

Minutes

Brendan made a motion to approve the May 15, 2014 Planning Board minutes as amended. Richard seconded. Vote yes 4-0.

NRSP # 2014-B: H-104, Brookline Barrel Mill, Gerald Farwell, 65 Route 13.

In attendance for this hearing is Jerry Farwell (Owner) and Keith Thompson, abutter at 31 South Main Street (H-106).

Jerry said nothing has changed expect they have revised the plans and added the paved area. There was concern that the wood processing area would obstruct the entrance of which it does not. They have not closed the gate lately and there is a huge amount of traffic that goes through there when the gate is open. The gate is on the abutter's property. Jerry has spoken to them and they have no issues with the gate on their property.

Ron asked if he would consider getting an easement. Brendan said he would like to see something in writing from the property owners that the gate is located on. Jerry said he doesn't believe he needs written permission. If there is ever an issue he will move the fence onto his property. Alan asked what kind of material will be stored there. Jerry said gravel and concrete makes great processed gravel, anything that the transfer station will not accept.

Ron made a motion to accept application #2014-B: H-104, Brookline Barrel Mill. Richard seconded. Vote yes 5-0.

Brendan said with the updated plan he believe the Conservation Commission should review this plan again. Alan asked if there will be screening done at this location. Jerry said yes they will be screening and that causes zero silt. Alan asked about the hours of operation. Jerry said 7am to 6pm Monday through Sunday. Unless there is an emergency winter related or storm related in town that would require them to be there.

Keith said Jerry has been a good neighbor and if he had an issue with the noise he would just call Jerry and discuss it with him. So far there have been no problems. **Alan** asked about the storage tanks. **Jerry** said they hold the Ice B-Gone which is calcium based. He has MDS sheets for this. **Alan** asked if there was a secondary containment unit for this if something was to damage the tanks it is housed in now. **Jerry** said he doesn't at the moment but that would be for the town to do. The tanks are made of steel. **Alan** said that would be something that they may need to look into. **Alan** asked if they store any oil, coolants, or fuel on the site. **Jerry** said yes it is stored in the garage. The fuel they have is in two 110-gallon tanks on trucks and the equipment is filled at the gas station. They have quick dry and towels for pick up in case of spill located in the garage. It also has a concrete floor. The biggest drum they have is 55 gallons for oil but sometimes it is cheaper to buy the smaller 5 gallon containers. **Jerry** said he has a waste oil furnace at his old shop and that is where he disposes of his used oil. Assistant Fire Chief Knowles does a yearly inspection. **Alan** said the Fire Department has requested fire extinguishers and some emergency lighting at the office. **Jerry** said he will have that completed. The Board agreed they would like to hold a site walk. **Jerry** agreed. A Site walk date was set for Saturday, July 12, 2014 at 10:00 am. **Alan** said that will give the Conservation Commission a chance to review the updated plan. This will also give the Town Engineer a chance to review the plan as well. **Richard made a motion to continue application #2014-B: H-104, Brookline Barrel Mill until the July 17, 2014 Planning Board Meeting. Ron seconded. Vote yes 5-0.**

Driveway Grades (Regulation)

Alan said they are awaiting a response from Town Counsel about the Driveway regulation. **Jerry** said he believes they should not make the new driveway grade regulation too restrictive. The paved apron is a good idea it will protect the road and a negative slope to the road is also a good idea.

ADU Ordinance Possible amendments

In attendance for this discussion is **Webb Scales** from the Zoning Board of Adjustment.

Alan read **Valérie's** letter:

"Dear Members of the Board,

Following recent applications submitted to the Zoning Board of Adjustment, I received comments and suggestions from other town Departments to modify the existing Section 2000.00, ADU, in order to prevent having 2 dwellings on a same property and keep the intent of the Ordinance.

The main recommendations are:

Reincorporate the section 2002.10 that was removed in 2008 "*Detached accessory dwelling units are only allowable when located on a lot that has twice the minimum required lot size. A detached accessory dwelling unit cannot be converted to a principal dwelling unit.*"

OR

Not allow detached ADUs to be consistent with the intent of the zoning ordinance, section 2002.01 "Accessory Dwelling Units shall be secondary and accessory to a principal single family dwelling unit".

Another suggestion was to allow detached ADUs ONLY with an existing building (such as existing garage) and not construct a second structure in order to convert it to an ADU. In this case, the requirement for twice the acreage may not be applicable.

The enforcement issue was also addressed, more specifically regarding section 2002.04 "*An ADU is not permitted in any principal dwelling in which the owner of record of the principal dwelling does not reside*".

Attached, please find:

Section 2000.00, ADU in the current Zoning and as it was printed in 2007 (ADU, IN-LAW APARTMENTS).

Letter from the Fire Department, dated February 7, 2014 with plan submitted to the ZBA with a recent application

Email from Webb Scale, ZBA member, dated May 10, 2007"

Webb said he has put together some thoughts from the ZBA he read:

"The ZBA Members' principal concerns with Section 2000 of the Zoning Ordinance

- How the Ordinance functions
- How the Ordinance is used by homeowners
- Making our judgment on the Special Exception

How the Ordinance functions

For someone who wants to construct an ADU, it is complex to figure out what he needs to have, what he needs to do, and to whom to apply in what order. It's generally clear that the applicant needs a building permit, but he cannot obtain a building permit until he appears before the ZBA and obtains a Special Exception. But, in order for the ZBA to grant the exception, the applicant needs plans which have been approved by the Fire Department and the Building Inspector. (And, it's not clear from the text of the Ordinance what the Building Inspector is approving, other than the same thing that the Fire Department is approving.)

The criteria for approving the Special Exception, beyond the items which do require some judgment on the part of the ZBA, include a number of items which require no judgment whatsoever (e.g., sizes, counts, locations, etc.). And, there are also items which don't apply until after the Special Exception has been granted (e.g., the house number assignment). And, so, the proceeding by the ZBA ends up being a series of "yup, the plan's got that" notes followed by a motion which contains a bunch of conditions on the applicant doing the stuff that the Ordinance requires.

I recommend that the "Requirements/Limitations" section be split into two sections: one which lays out the criteria required for the ZBA to grant the Special Exception, and one which lays out the requirements for the plan which, after the Special Exception is granted, the Building Inspector must approve before granting the Building Permit and/or Certificate of Occupancy.

How the Ordinance is used by homeowners

Several of the members of the ZBA have concerns as to how the ADU Ordinance might be used and/or abused by homeowners. We believe that the Ordinance is intended to allow homeowners to provide housing which facilitates a care-giving arrangement. In some cases, the homeowner houses an elderly parent in the ADU. In some cases, the parent is the homeowner, and they house a child in the ADU. In some cases, the ADU is used to house a professional caregiver for the homeowner. In some cases the homeowner lives in the ADU while their child's family resides in the principal dwelling. So, it is a bit tricky to express the purpose of the Ordinance concisely.

However, we can state a few things which the ADU Ordinance is *not*. It should not be a substitute for an Apartment Ordinance or a Mixed-Use Zoning Ordinance. The ADU should not be for housing unrelated persons who are not a household employees. Specifically, we understand that it is *not* intended to allow a homeowner to create an income stream by renting out an apartment. Unfortunately, these are not clearly delineated in the Ordinance.

Making our judgment on the Special Exception

It is hard to stick to the spirit of the Ordinance without better support from the text of the Ordinance (see below).

ZBA Experiences with Section 2000 of the Ordinance

How ADUs are created:

- "Carved out" from inside an existing house
- "Repurposed" space inside an existing, detached garage or other accessory structure
- "Added to" an existing house
- "Built-in" during the construction of a new house
- "Built from scratch" as a free-standing building (typically with a garage)

The ADU Ordinance needs to address adequately all five cases.

"Carved out" from inside an existing house

- This is the reason for having subsection 2002.12 ("gross living area of the principal dwelling").
- We used to require that it be possible to re-incorporate the ADU back into the principal dwelling, but, this was confusing in the context of detached ADUs, and, as a practical matter, no one ever expected it to happen, so the requirement was removed from the Ordinance.

"Repurposed" space inside an existing, detached garage or other accessory structure

- This is one of the reasons for having subsection 2002.11 ("gross living area of an accessory dwelling unit").
- This is the basis for permitting "detached" ADUs. And, it's a perfectly reasonable provision, but it opens the door to the problem described below.

"Added to" an existing house

- This is the reason for having subsection 2002.02 ("developed in a manner which does not alter the character or appearance").
- This generally causes no problems, as the homeowner's own pride of ownership and sense of aesthetics prevents problems here.

"Built-in" during the construction of a new house

- We've seen a couple of these, lately. They generally pose little problem procedurally.
- However, in some cases it has been clear from the design that what was being proposed was really an asymmetric duplex, rather than a house with an ADU. And, if the design really provides for fully-separate living quarters, it raises the concern that the project is running counter to the purpose of the Ordinance, even though it might meet the letter.

"Built from scratch" as a free-standing building (typically with a garage)

- We've seen two of these just recently, one of which presented difficulties for me and which prompted the Planning Board to take up this issue.

The proposal was to build a detached ADU with a drive-under garage on a lot with an existing three-bedroom house. The design for the ADU provided a footprint of 27'4"x36', which multiplies out to 984 sq.ft., and that complies with section 2002.11. However, the footprint of the existing house was 28x32, meaning that one floor's "living area" was 896 sq.ft. To my way of thinking, the proposed ADU couldn't meet the criterion of "secondary and accessory" in 2002.01 (e.g., the planned ADU had a larger footprint and almost as many bedrooms as the principal dwelling).

If it had been the case that the ADU were being added to an existing garage, it would have been reasonably straightforward for me vote to approve the Special Exception. However, as new construction, the project really comprised building not 1000 sq.ft. but 2000 sq.ft., which would have disqualified it as an ADU.

By comparison, the other recent case (heard the next meeting), was for a single-bedroom ADU with a 936 sq.ft. footprint on a lot with a four-bedroom house which had a 1320 sq.ft. first floor. Needless to say, in that case it was clear that the ADU *was* "secondary and accessory" to the principal dwelling.

Thus, if the Planning Board is interested in reconsidering the size limitations on ADUs, I suggest that the Board consider the various ways in which an ADU can come into being. It strikes me as important for various reasons to retain limits on the minimum size of an ADU as well as on the minimum size of the principal dwelling unit when an ADU is "carved out" of it. However, the 1000 sq.ft. maximum size of an attached ADU is artificially small if it is attached to a 5000 sq.ft. house. Similarly, if an existing house could support a 2000 sq.ft. addition, why should it be prohibited from being built as an ADU? And, further down that slippery slope, if a lot already has a 36'x60' barn, it seems strange to say that the owner can put an ADU in it, but only use half of it. Nevertheless, it is appropriate and consistent with the rest of the zoning to deny a Special Exception for the applicant who wants to construct what amounts to a second house on his lot and call it an ADU.

So, perhaps there should be no maximum size for an attached ADU. Rather, the requirement should be that the ADU be properly integrated into the principal dwelling unit, and not simply a "stealth duplex" (for instance, there should be easy, interior flow provided between the two dwellings).

And, perhaps the maximum size for a detached ADU should be phrased in terms of a percentage (e.g., no more than 50%) of the size of the principal dwelling unit, where the "size" is the footprint (or, alternatively, total area) of each building and not "living area". (Or, "living area" needs to be carefully defined, perhaps including utility space, and perhaps including any garage intended for use by the resident of the ADU.)

Suggested Changes to Section 2000 of the Ordinance

2001.00 Purpose

The Planning Board, in consultation with the Town, needs to consider the purpose of the ADU Ordinance. It should be specific, and not an elastic clause used to cover a variety of needs. For instance, if we as a Town wish to permit apartments for general rent in residential lots, then the Planning Board should propose an Apartment Ordinance. Likewise, if we as a town want to legitimize Residential Uses in conjunction with Commercial Uses in the Route 13 Industrial/Commercial zone, then the Planning Board should propose amendments to the Zoning Ordinance for the Industrial-Commercial Zone or a separate Mixed-Use Zoning overlay for that district. The point is, the ADU ordinance should have a specific purpose so that it cannot be used to make an end run around the single-dwelling provision of the Residential Zoning.

Specifically, the purpose section of the ADU Ordinance should make clear that the accessory dwelling unit is to allow the owner to provide living arrangements for family or employees (such as personal caretaker), and that it is not for the purpose of housing unrelated persons or to create rental income.

Also, the phrase "shall remain with the property" doesn't belong in the purpose, nor does the clause about ADUs being permitted and how. These should be placed in sections 2003 and the appropriately-reworked 2002, respectively.

2002.00 Requirements/Limitations

This section should be divided into two: one section should specify the criteria which the ZBA must find in order to grant the special exception; and, a separate section should list the requirements which the Building Inspector must confirm before granting a Building Permit and Certificate of Occupancy. It is possible that they may have overlapping areas, but, since the two functions are separate and independent, the sections and lists should be separate.

For instance, the following existing subsections would require the judgment of the ZBA:

- 2002.01 "secondary and accessory"
- 2002.02 "developed in a manner which does not alter the character or appearance"
- 2002.17 driveway appearance and "adequate off-street parking"

while these existing subsections would only need to satisfy the Building Inspector:

- 2002.03 "only one ADU"
- 2002.09 "two means of egress", "approved by the Fire Department"
- 2002.11 "gross living area of an accessory dwelling unit"

- 2002.12 "gross living area of the principal dwelling"
- 2002.14 "interconnected fire alarm system"
- 2002.15 "house number for the accessory dwelling unit"
- 2002.18 "septic system"

and these subsections belong elsewhere in the ordinance (perhaps under 2004, or combined with 2003):

- 2002.07 "not considered...an additional dwelling unit for...minimum lot size"
- 2002.14 "building permit required"

Subsection 2002.06 ("additional entrances or exits shall be located to the side or rear...whenever possible") is problematic: as currently structured, the ZBA is left to judge whether locating these appropriately is "possible", without any structured way to proceed. Moreover, while this requirement makes sense for an attached ADU, it is already covered under 2002.02 ("does not alter the character and appearance of the principal dwelling unit as a single family residence"), so it is unnecessary in that case. And, the requirement makes little sense in the case of a detached ADU, where it is perfectly reasonable to have a door on the front. So, it would be best if this subsection were deleted.

With respect to 2002.11 ("gross living area of an accessory dwelling unit"), it would be helpful if the Ordinance could consider not just the "living area" but the totality of the construction. For instance, if the proposal is for a 984 sq.ft. ADU as the top floor of a free-standing garage which was newly-constructed to house it, then, really, the project is closer to 1968 sq.ft. Likewise, in the case of a detached ADU, it might be best to bound the size (i.e., either "footprint" or "total area") in terms of a percentage of the corresponding size of the primary dwelling unit.

Alternatively, Alan offered the suggestion that an ADU be allowed only if the ADU were secondary and accessory to the *building* which housed it, regardless of whether it was the principal dwelling or an accessory structure. This would go a long way toward avoiding the case of a homeowner building what amounts to a second dwelling on the property -- the new building would need to have a primary purpose other than the ADU.

Additional suggested changes:

- 2000 (throughout): "Accessory dwelling units" should be either uniformly capitalized or uncapitalized
- 2002: subsection .08 should be removed and the remaining subsections should be numbered sequentially.
- 2002.03: should say either "per principal dwelling unit" or "per lot", not "and/or".
- 2002.09: remove "Attached or detached" -- the requirement applies to all ADUs, there is no third kind.

2005.01: the 180-day amnesty period has elapsed -- I think we can remove this subsection from the zoning. (Likewise, I think we can remove "after March 9, 1999" from subsection 2006.01.)

The Board thanked Webb and asked that he email the suggestion to Valérie.

Webb said he also believes that the Board should look into an apartment ordinance. Maybe modify the Commercial Industrial Ordinance to allow apartments above business along Route 13.

Economic Development Committee

Ron said the second newsletter went out in the mail to all Brookline Residents. They will be meeting with Big Bear next.

Capital Improvement Committee

Alan said he has no update but will finish the letters this week to distribute to all the departments.

Excavation Rules and Taxes - informational discussion.

Alan said Mary Pinkham-Langer works for the State at a Gravel Tax Appraiser with the Property Tax Appraisal Division. She will discuss the rules and regulations for excavation as it applies to subdivisions. She will be in attendance on July 17, 2014. The meeting will start at 6:00 pm. **Brendan** suggested that they invite the surrounding towns to attend this part of the meeting.

Blasting Ordinance

Brendan said this has been approved by the Selectboard. This will take effect at 500 cubic feet which is about 10 truckloads. The well monitoring ordinance will be a different issue that the Selectboard will be discussing. **Ron** asked if this Town Ordinance will take effect for any subdivision that has not been start but has been approved. **Brendan** said yes if it meets the criteria set forth in the new Ordinance.

Richard made a motion to adjourn at 8:45 pm. Ron seconded. Vote yes 5-0.

Alan Rosenberg, Co-Chair _____

Ron Pelletier, Member _____

Richard Randlett, Member _____

Brendan Denehy, Selectboard Representative _____

Eric Bernstein, Alternate (voting for Dana) _____

The next Regular Planning Board meeting will be June 19, 2014.

Minutes submitted by Kristen Austin.