Members Present: Peter Grote, Phil Krill, Bess Andrews, and Susan Retz

Others Present: Stan and Lorie Sherburn (applicants), Keith Batchelder (attending as a member of the public, not as a Planning Board representative)

A meeting and public hearing of the Franconia Zoning Board of Adjustment (ZBA) was held on Wednesday, April 10, 2019, at the Franconia Town Hall.

The meeting was called to order at 7:00pm by Peter Grote.

Bess Andrews read the minutes of the April 2, 2019, meeting. Phil made a motion to accept the minutes as written, second by Bess, with all voting in favor.

**CONTINUED PUBLIC HEARING:**

**Application for Special Exception, Case #2019-01**

This is a continued public hearing on the Application for Special Exception filed by Stan and Lorie Sherburn. Peter asked the Sherburns to review for the Board what the plan is for this property. Stan presented the Board with a drawing and plot plan for review. They are trying to take an existing home office, which is about 20’x20’, and add an addition of about 20’x20’ to double the size of the unit and turn it into living quarters for he and Lorie. This would be detached from the main house but the electricity, sewage, and water will all come from the main house. The Sherburns plan to give the house to their son, Brandon, and his wife and daughter.

Stan stated that approximately two years ago they came to the Planning Board for a lot line adjustment to have sufficient setback to the back of the property. The original lot was three-quarters of an acre and it is now 2.13 acres. When Stan applied for the building permit, Alan told him to come to the ZBA for a special exception. Stan was also told he had to demonstrate, through a new sewage design, that it can accept a four-bedroom house. The sewage design is in process.

Bess questioned whether this is their total acreage. Stan stated he and his brother own the farm, which is about 180 acres, which surrounds his parcel. Bess raised a concern that this property is in Residential A which is supposed to be five-acre zoning. Stan stated this lot was created before zoning and is grandfathered. Peter stated that what isn’t grandfathered is the ability to build a second house on the property. Stan stated he is not asking to do that. He is asking to have an accessory apartment.

There was a brief discussion regarding the difference between a special exception and a variance.

Peter stated that a special exception is very rare and this is the first time to his knowledge that it has happened in the Town of Franconia.

There was discussion regarding which zoning regulations govern this application. Stan believes the 2016 regulations were in effect because he began this process in November of 2018. The Board believes the 2019 regulations, voted in at Town Meeting in March of 2019, are the ones that are in effect. The 2016 regulations governing an accessory apartment state, “…in conjunction with or attached to…”; however, the 2019 regulations state, “…must be attached…” There was further discussion about the meaning of “in conjunction with”. Keith Batchelder stated that as a member of the Planning Board he was involved in the revisions to the regulations and the language was changed to “must be attached” because the previous language was unclear. Keith also stated that he believes the special exception can never be granted because the zoning says the accessory dwelling unit must be “attached or within” the dwelling unit. He suggested that Stan would need to apply for a variance.

Bess suggested that Stan and Lorie apply for a Senior Housing Unit, which doesn’t have to be attached. Stan asked what the difference is as far as zoning is concerned. Bess stated the regulations say, “Independent-living residential structures, whether detached or attached, without full-time nursing staff, specifically for households with at least one (1) resident fifty-five (55) years of age or older, each with a limit of two (2) bedrooms, which comply with all of the then applicable NH fire and building codes.” Stan was concerned that if he applied for a senior housing unit, it would always be deemed a senior housing unit and once he and Lorie were done with it, his son would be unable to use it. Bess stated that it was not clear from the town zoning ordinance whether a senior housing unit permit would “run with the land” or if a change-in-use permit would need to be issued, and the ZBA would look into it.

Bess stated there may also be a question about the fact that this parcel is not five acres, which is the minimum requirement in Residential A, and the Sherburns might have to come back to the ZBA to apply for a second living structure on the property. Stan said this property is grandfathered. Keith stated that once you change the footprint of the building, the current zoning comes into effect and then you need to apply for a zoning variance.

Stan expressed his frustration at being given incorrect information on this application and the zoning regulations that are currently in effect and he just wants a building permit.

The Board recommended that Stan apply for a Senior Housing Unit permit from the Select Board. The Board also recommended that Stan withdraw his Application for Special Exception. Bess made a motion to accept Stan’s request to withdraw his Application for Special Exception, second by Susan, with all being in favor.

After a motion by Phil Krill, second by Bess Andrews, the meeting adjourned at 7:40pm.

Respectfully transcribed,

Carol Wills