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

Others Present: Allan Clark (Building Official)

A working meeting of the Franconia Zoning Board of Adjustment (ZBA) was held on Thursday, May 9, 2019, in the Conference Room of the Franconia Branch of Woodsville Guaranty Savings Bank.

The meeting was called to order at 5:45pm by Peter Grote.

Approval of Minutes – Bess stated that Keith Batchelder was in attendance at the meeting but he was there as a member of the public and not as a representative of the Planning Board and that should be noted. She also would like to add the following sentence at the end of the second paragraph on page 2, “Bess stated that it was not clear from the town zoning regulations 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.” Sue Retz made a motion to accept the minutes as corrected, second by Bess Andrews. Motion passed unanimously.

Allan stated that senior housing is new, but once it is granted it runs with the land and you need to come back to the ZBA and ask for a variance to change it back to whatever it was before.

The Board discussed the difference between Senior Housing Units (SHU) and Accessory Dwelling Units (ADU) as it relates to the Sherburn situation. Allan stated that the Sherburn situation does not qualify for SHU because the property is not in the correct zoning district, it is not large enough, and it does not have town water. He also stated that senior housing is really multi-family housing. Allan stated he confirmed with town counsel that the Sherburns do not qualify for senior housing.

Allan explained to the Board that under the new zoning, the Sherburns need three variances. The first variance is a waiver of the requirement that the existing structure can be converted into an ADU if not attached. The second variance is a waiver of the requirement that there be a common doorway between the ADU and the primary dwelling unit. The third variance is a waiver of the 750 square foot limit to allow for an additional 150 square feet (900 sq. ft. total). If the Board grants those three variances then you have to act on the special exception.

The Board discussed the difference between a variance and a special exception. Allan stated with a variance you need to prove very specific requirements such as hardship. He stated the Supreme Court has loosened up on what a hardship could be. Allan believes the fact that the Sherburns have an existing structure, which is not being allowed to be converted into an ADU, could be a hardship.

Peter asked what the initial discussion was with the Sherburns on the variance versus the special exception. Allan stated it was his opinion, based on the old zoning, that they needed a special exception because that was required. There was no requirement for a door or that it be attached; only that it be connected and that connection could be underground with a foundation. Peter stated he believes the old zoning said in conjunction with or attached. Allan stated he has a legal opinion from town counsel saying if there was a foundation that connected the two, even though it was underground, that would meet the requirement. Peter requested that Allan provide a copy of that legal opinion. Allan stated it was a verbal communication and not in writing. Peter requested Allan ask town counsel to put that statement in writing. Allan agreed but stated it was not relevant to the variance requests that will be coming in from the Sherburns.

Peter asked Allan why he turned down the Sherburns building permit. Allan stated under the old zoning the Sherburns needed a special exception. He also told the Sherburns that even though it was not part of the zoning at the time, they would need to show that they have a new septic plan if the current one fails because it predates state approval.

The Board discussed their desire to have all applications be reviewed by the ZBA and go through a checklist to make sure all requirements are met prior to scheduling a hearing so they can do their due diligence and be properly prepared for the particular variance request or special exception. Allan offered to review all applications and issue a letter to the Board explaining why the person needs to apply for a variance so the Board has all the information they need.

Allan discussed with the Board two potential property owners that will be coming before the Board for variance requests. One is a property in Mittersill where the variance is required because they do not meet the setbacks. The second is the Iron Furnace Brewery and they want to add a deck in the front and they will require a variance from the setback and one for being in the floodplain. The Brewery will also need site plan approval from the Planning Board if the Board grants those two variances.

The Board briefly discussed the possibility of the Planning Board putting together a separate set of zoning regulations for Mittersill. Allan stated that he met with the Planning Board and they have no interest in doing that.

The Board discussed potential new members. Peter suggested that Brian Williams be appointed as a member of the ZBA. Sue Retz made a motion to invite Brian Williams to become a member of the ZBA, second by Bess Andrews. All were in favor and the motion passed unanimously.

(Note: Any potential new members or alternate members can only be appointed by the Board of Selectmen. The request to have Brian Williams appointed as an alternate member of the ZBA will be presented to the Board of Selectmen at their next meeting.)

After a motion by Bess Andrews, second by Sue Retz, the meeting adjourned at 6:50pm.

Respectfully transcribed,

Carol Wills