



CITY OF DANBURY
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ZONING BOARD OF APPEALS
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ZONING BOARD OF APPEALS
MINUTES - Corrected
APRIL 25, 2019
City Council Chambers, 155 Deer Hill Avenue
7:00 p.m.

ROLL CALL:

Chairman Richard Jowdy called the meeting to order at 7:00 p.m. Present were Pete Delucia, Rodney Moore, Michael Sibbitt, Anthony Rebeiro.

Absent were Joseph Hanna, Herb Krate, and Richard Roos.

Rodney Moore made a motion to hear Application Nos. 19-03 and 19-04; seconded by Anthony Rebeiro. Motion passed unanimously.

Mr. Jowdy explained the procedure for presenting applications to the Zoning Board of Appeals.

ACCEPTANCE OF MINUTES: February 28, 2019 and March 28, 2019

Acceptance of the minutes from February 28, 2019 was postponed until the next regularly scheduled meeting on May 9, 2019.

Motion to accept the minutes of March 28, 2019 was made by Anthony Rebeiro; seconded by Peter Delucia. Motion passed with “ayes” from Anthony Rebeiro, Peter Delucia, and Richard Jowdy.

The next regular meeting is scheduled for **May 9, 2019**.

NEW BUSINESS:

#19-03: Marcus, Neil R., Esq. (agent) for Echavarria, Adriano, 52 James Street, (J12168), R-3 Zone

Sec. 4.C.3. Reduce front yard setback from 20' to 18.5'; reduce side yard setback from 15' to 3'.

Sec. 4.G.3.b.(1): Allow new on-site parking to be located between the street and principal buildings adjacent to the street.

Sec. 8.B.1.a.(1)(a): Reduce required distance from 50' to 33' for driveways entering a public street right-of-way from its intersection with another public street.

Sec.8.C.1.(5)c(2): Allow parking spaces in required front yards for proposed addition for two-family residence.

Attorney Neil R. Marcus, Cohen & Wolf, P.C., 158 Deer Hill Avenue, Danbury, CT represented the applicant, Mr. Echavarria. Mr. Marcus mentioned that the application would look familiar to the Board because they granted the former owner, Mr. Jay Montanari, similar variances on June 28, 2018. He explained it is a corner lot, and this is a slightly different site plan. Parking (former plan) would create a hardship for rental purposes if someone was handicapped. Client wants to revise plan to make property work. The two-family house that was previously proposed and approved, just doesn't work so they've come up with a new plan that does not really change the previously-granted plan. Parking will be adjacent to existing dwelling. All they are doing is asking for a different design of the building. The hardship to consider is that the subject property is long and narrow with frontage on both streets. The driveways are close to intersections because the lot is close to the intersections. Attorney Marcus said the addition with more room will make the house more livable. Attorney Marcus further explained the difference between the two projects lies in parking adjacent to the existing house on 52 James St. The formerly-proposed addition was 40' x 22', and the newly-proposed addition will be 71' x 22'.

Pete Delucia asked about the parking spaces and would they remain the same? Mr. Marcus said they would consider parking the cars in the garage on Auburn with two on James (partially inaudible as Mr. Marcus consulted with property owner). Mr. Jowdy asked what the coverage will be. Mr. Marcus explained current coverage is 15%, proposed coverage will be approximately 29%, which is still below the limit of 30%. Rod Moore ask if the addition will be a two- or single-story. It will be a single story per Mr. Marcus and his client. Rod Moore asked if 800 sq. ft. vs 1,400 sq. ft. has an economic component. Mr. Marcus said the owner will spend more money building a larger unit, and the unit will be more livable, because an 800 sq. ft. unit is small. At 1,400 sq. ft., it is a more average unit, and it will allow for a family with children.

His client wants to improve the value of the property and would like to make a more livable unit. Rod Moore said it is closely the same, but this time they are increasing it to the very edge of coverage. Neil Marcus said that clearly there is hardship with the lot, but it is a matter of degree and as long as they stay under 30%, they are still in harmony with the neighborhood. Chairman Jowdy said that with a larger house, with children, the safety of tenants should be considered. Neil Marcus said if the neighbors are concerned about those issues, they should come out and say same. Mr. Marcus indicated if they (the Board) thought they were overreaching and wanted to grant or wanted to say that 1,200 sq.ft. is okay, they would have to accept that. They chose 1,400 sq.ft. because it is a very workable floor plan.

Mr. Marcus said the existing dwelling will not change, it will be renovated; this is merely the addition of a second dwelling unit. Mr. Moore asked how many bedrooms. Mr. Echavarria approached the Board and explained the objective of the property is to maximize its efficiency. They can achieve a minimum of 3 bedrooms and 2 baths and 1,400 sq. ft. is a perfect size. He said with his current tenant portfolio this would be a great situation for them. For a handicapped tenant allowing the existing driveway to remain is a benefit for handicapped tenants.

Neil Marcus acknowledged having the benefit of the previous approval. The lot creates the hardship because it is narrow with two frontages. He indicated his client has improved other properties in Danbury. Neil Marcus thinks the proposal makes sense and is not significantly beyond what was previously granted, but they are willing to consider a smaller addition.

No further questions.

Realtor, Connie Strait, favors the application. No one opposed.

Motion to close Peter Delucia; seconded by Tony Rebeiro. Motion passed unanimously.

#19-04: Marcus, Neil R., Esq.(agent) for Berry, Martha & Gregory, 102 Long Ridge Road, (J22022), RA-80 Zone

Sec. 3.G.2. Allow accessory building to be used as a residence.

Mr. Jowdy announced the next application.

Attorney Neil Marcus represented this applicant. The property consists of a large but long, narrow lot with an existing two-story frame dwelling and an existing frame garage. The applicant seeks to use the garage for living space on the second floor, the typical mother-in-law unit. A previous variance would preclude doing that, and they would like to modify to convert and use it as a garage-guest/ in-law cottage. Current buildings will remain, under this application, the same; they will not be expanded.

Attorney Marcus said the Danbury Zoning Regulations they seek to vary is Sec. 3.G.2., which prohibits accessory buildings. The building already exists with a second story, no construction necessary to raise the roof. The hardship is a long, narrow lot containing 162,449 sq.ft. in the RA-80 Zone—a double lot for this neighborhood. The single-story residence and accessory garage have existed since 1990. Because the topography drops off significantly and is not very usable, a subdivision could not be accomplished. The problem is the shape of the lot, and they cannot get the proper frontage. Although there are four acres, both structures are located on the same two acres. The additional land is in the rear and is inaccessible. They would like their mother-in-law to reside with them.

The detached building is a 3-car garage, and they would like to use it as a guest cottage. This requested variance is to overcome the prohibition of an accessory building as a residence use on this property. Each building has sufficient parking for its use. Renovations to the interior of the garage are expected.

The prior variance was restricted as to the use of the second floor. Mr. Marcus said his clients are very clear about their intentions.

A March 5, 1990 approval stipulated not to be used as office space and no plumbing in the garage. Mr. Marcus is asking this commission to remove the plumbing stipulation. Mr. Marcus said if you go out to the site and see what exists there, he does not understand why they cannot approve to improve for a mother-in-law or related party. Mr. Jowdy said that the regulations at that time did not allow for a mother-in-law apt. Mr. Marcus said if he could attach the garage to the house, then they could do what they want to do without a variance. Mr. Jowdy said he is trying to establish the hardship and that if they could make a place for a residence in the normal way, it would create a nuisance on this particular lot. Mr. Marcus said that if this property was in Redding or Ridgefield, it would be allowed. He further stated they are asking to use second floor of existing structure for a residential purpose, and the Board could stipulate a condition that this is done for a related party – a family member of the main dwelling. This would be a practical use of the property, and there does not seem to be any neighborhood opposition.

Neil Marcus indicated the Berrys have spoken with their neighbors, and neighbors have no opposition. Mr. Berry indicated that “Mary,” a neighbor, said she could not hear anything that goes on there, and another neighbor (unidentified) said they could do anything they wanted.

Rod Moore asked what is upstairs now? Neil Marcus indicated it was empty storage. Rod Moore said the tax assessor’s file indicates it is finished but does not say anything about plumbing. Neil Marcus said assessor considers it finished because it is sheet rocked.

No questions from the Board.

In opposition: Sean Hearty, Zoning Enforcement Officer for the City of Danbury offered some clarification on the application. Applicant is asking to use accessory building as residence.

Mr. Hearty continued with reminding the Board that this property is in the RA-80 zone. Mr. Hearty addressed the variance focusing on use, and there is no accessory use as a residence. The Assessors records look like there is an apartment there now but that can be dealt with later if that is the case. The RA-80 Zone permits single-family dwellings. One single-family, principal dwelling per lot is permitted. A cottage or an apartment is a dwelling unit. Mr. Hearty referred to the definitions as stated in the Zoning Regulations. We do not permit two-family units in the RA zones, and this is a petition to allow a two family in a detached structure in an RA zone.

Mr. Hearty referred to the minutes from the February 22, 1990, specifically, Application No. 90-21 for this property. The variance was granted for office space above the garage with the stipulation there would not be any plumbing in the garage. A previous ZBA application, No. 90-04 was denied because it was too large in proportion to the existing house, and the plan to use the upper portion of the accessory building as office space is not a permitted use.

Prior to accepting the application, Mr. Hearty discussed with Mr. Marcus that he did not think it belonged in front of the Zoning Board of Appeals, due to fact that Section 11.B.2.a states: "No use variance shall be granted by the Zoning Board of Appeals for any parcel located within an RA-8, RA-20, RA-40, or RA-80 zone." Mr. Hearty stated, "This is a use variance, and I do not think it belongs in front of this Board. We are looking for a denial." He further indicated, we have been upholding single-family zones for all these years in Danbury, and this would give everyone who has an oversized lot with a detached garage an opportunity to come in and request another unit; it would be a boon. Mr. Jowdy asked if they could put a free-standing addition on as in-law apartment. An addition is allowed but not a free-standing structure.

Mr. Jowdy thanked Mr. Hearty and asked if an addition on the main dwelling as an in-law apartment was permitted. Mr. Hearty answered that an addition, such as another bedroom, is acceptable.

This is a cut and dried situation per Mr. Jowdy.

Neil Marcus said the prior zoning prohibition on an office makes more sense because an office is not allowed in a residential zone. A residence is allowed in a residential zone. A residence would not be a change of use. Neil Marcus said this is not a use variance. Neil Marcus said this would not change the neighborhood. If the Board thinks it will be a problem you should grant the variance without a separate kitchen. He said the kitchen is the issue. To not allow plumbing would preclude heating and running water for a bathroom. He suggests this is not a use variance and not offensive to the neighborhood or change the appearance of the property. They are not seeking a kitchen in at this point in time. They are asking for right to have someone sleep and bathe up there. Suggests condition of "no separate kitchen." Attorney Marcus said that a use variance would be asking for a commercial or industrial uses in residential zones.

Mr. Jowdy asked Sean Hearty to address Mr. Marcus' remarks said a kitchen definitely creates a living unit. This detached garage is still an accessory unit.

Neil Marcus got up to read the definition of “dwelling unit” & “separate living quarters”. He feels the language is straightforward. They do not want kitchen at this point just the bedroom & bath.

Rod Moore does not find it 100% clear (the definitions) “dwelling unit” is a little cloudy. He said it unclear to him if it includes a kitchen or not whether it is a dwelling unit.

Motion to close session by Mr. Jowdy; Peter Delucia seconded. Motion passed unanimously.

CONTINUATION OF PUBLIC HEARINGS: None

OLD BUSINESS: None

DECISIONS:

#19-03: Marcus, Neil R., Esq. (agent) for Echavarria, Adriano, 52 James Street, (J12168), R-3 Zone

Sec. 4.C.3. Reduce front yard setback from 20’ to 18.5’; reduce side yard setback from 15’ to 3’.

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Sec.8.C.1.(5)c(2): Allow parking spaces in required front yards for proposed addition for two-family residence.

Motion to approve 19-03 by Anthony Rebeiro, 52 James Street, per plan submitted; second Michael Sibbitt, Motion passed unanimously.

#19-04: Marcus, Neil R., Esq.(agent) for Berry, Martha & Gregory, 102 Long Ridge Road, (J22022), RA-80 Zone

Sec. 3.G.2. Allow accessory building to be used as a residence. Mr. Jowdy thinks they do not qualify to decide on this request, and he will abstain because he cannot answer his questions based on the way it was presented and offered suggestions of motions.

Motion to table by Rod Moore to next regular meeting on May 9, 2019 for input after obtaining an opinion from Corporation Counsel to see if this is within the Zoning Board of Appeals jurisdiction as a use change, specifically Sec. 4.A.5. definition of a dwelling unit; Mr. Hearty asked the Board if their question to Corporation Counsel is if Regulation Sec. 11.b.2.a. applies.

This section refers to use variances and they confirmed. Motion seconded by Michael Sibbitt.
Motion passed unanimously

OTHER MATTERS: None

CORRESPONDENCE: None

ADJOURNMENT:

Motion to adjourn Anthony Rebeiro; seconded by Peter Delucia. Motion passed unanimously at
8:15 p.m.

Respectfully submitted,

Mary S. Larkin
Secretary