

CANDIA ZONING BOARD OF ADJUSTMENT

MEETING MINUTES OF

October 25th, 2022

APPROVED

ZBA Members Present: Judith Szot, Chair; Boyd Chivers, Vice-Chair; Mark Raumikaitis; Anthony Steinmetz, Ron Howe

Chair Szot called the meeting to order at 7:00PM, followed immediately by the Pledge of Allegiance

Case #22-010: • Applicant: 16 Colleny LLC, 205 Tower Hill Road, Candia, NH 03034; Owner(s): 16 Colleny LLC, 205 Tower Hill Road, Candia, NH 03034; Property Location: 16 Colleny LLC, 205 Tower Hill Road, Candia, NH 03034; Map 411 Lot 2; For a Special Exception under Article V Section 5.02A(2): Table of Land Use – Residential. Intent: to request a variance to allow the construction of an accessory dwelling unit

M. Raumikaitis pointed out that the paperwork is technically incorrect, and that the LLC is named, 16 Colleny Drive LLC. He also mentioned that the application states that the property had not previously come before the board, when in fact it had in March of 2022.

D. Anagnost also mentioned that the paperwork states to allow for the construction of. The unit was already constructed by the owner(s) previous and that they are actually in the process of deconstructing it.

J. Szot inquired as to whether he was aware that no permit were pulled for said construction. To which he replied that they had just been made aware of that fact.

D. Anagnost: My son Alexander is moving into town, they are moving into the main house. So they are not currently using the location per instructions from the former building inspector. Included in those instruction were the removal of the stove and any potential for cooking in the unit. The previous, illegal septic has been replaced with an approved septic. Alexander has 6 children, two of them are teenagers. So what we are here before you today is to request that we utilize that space for two bedrooms and a bath for the two teenage children and then the other children will occupy the main house. We are not here before you to request a full unit.

B. Chivers inquired as to whether there will be a kitchen. D. Anagnost replied that there will not. That the existing kitchen has been deconstructed.

B. Chivers: Inquired about what distinguishes this from just another bedroom attached to the house.

Brian Pratt: The engineer for the applicant stated that is exactly what it is, another bedroom(s). After coordinating with the previous building inspector, they were told that because it is not attached to the house, it's not technically part of the house so it is kind of considered a dwelling unit. So they were

instructed, because that use isn't the ordinance whether it is permitted or not. Stating that is why they were there because there is no way to classify a garage with bedrooms and a bathroom above.

B. Chivers stated that this is not an accessory dwelling unit.

Approved septic design. Go forward and replace it.

T. Steinmetz: Inquired as to whether there is more than one septic system? It was explained that one exists for the main building and the barn and the new one replacing the previous, illegal one, has been replaced for the garage.

M. Raumikaitis asked the board if this is something that should even be before the board? Because it not an accessory dwelling unit?

B. Chivers mentioned that the previous building inspector directed them here.

J. Szot: The problem is, if you grant an accessory dwelling unit, the meaning of an accessory dwelling unit means that you have sleeping, eating, and cooking in that unit whether they are not putting it in now. If we grant you an accessory dwelling unit, it means that at some point, you have a right to put cooking facilities to make that a 1600 square foot living space with bedrooms, kitchen, etc.

The engineer for the applicant stated that it was his understanding that conditions could be placed on the facilities, meaning that it cannot be converted.

B. Chivers confirmed that it will only be occupied by the owner/part of the family of the owner.

T. Steinmetz asked for clarification as to which building inspector they had been in communication with.

J. Szot inquired as to whether the applicants had any communication with the new/current building inspector.

B. Chivers confirmed with the applicant that they have no intention of renting this space out or turning it into a permanent unit. He stated that he appreciated the applicant coming before the board to make it legal but also said that it is hard to make something legal that doesn't really fit into the ordinance.

M. Raumikaitis stated he has concerns about it being an ADU with conditions because of the future can of worms that it could potentially open. He did not feel that the discussion should be about it being an ADU, due to the fact that it is not.

J. Szot: If it is not expressly permitted, it is implicitly denied. So there is nothing that permits having dwelling units / bedrooms outside of the house. There is the conundrum.

B. Chivers suggested that it might be appropriate to bring the current building inspector, Bob Donovan in and explain the conundrum to him.

S. Steinmetz inquired about the size of the property if it would be more appropriate, more difficult, or less difficult to subdivide the property.

J. Szot, after hearing the amount of frontage for the property, stated that a subdivision cannot be done because of the limited frontage and the fact that a road would have to be put in. She reiterated that the

problem is using the words Accessory Dwelling Unit and the fact that it would go with that building forever and that it was noticed as such.

R. Howe inquired as to whether there is a fire alarm system in the whole complex?

D. Anagnost affirmed, stating that the previous building inspector had come out and had told them that they meet all of the other criteria and are in full compliance with all codes and would need to come before the board for this piece.

The new/current Building Inspector, Bob Donovan, was asked to join the meeting.

J. Szot: Those words "accessory dwelling unit" are really the hang-up.

B. Chivers stated that conditions could be placed on the approval that eliminates all of the privileges that go with an accessory dwelling unit.

R. Howe brought up the size limitation that Candia has for accessory dwelling units and that this particular building is twice that size.

B. Donovan stated that if they came to him for a permit to put two- bedroom above a detached garage that he would deny the application and send them to the ZBA. If you have an ADU, it is supposed to be running off of the same leach field, power, electrical, and well and now it is already separated.

J. Szot: The thing is, there is nothing in the ordinance that allows living in a detached building because everything talks about dwelling unit, dwelling unit, dwelling unit and it defines a dwelling unit as a building, or a portion, providing a complete living, cooking, and sanitary facilities. So there is nothing that allows sleeping facilities separate from the main dwelling units. So if it is not specifically allowed, it is implicitly denied. The problem for me is accessory dwelling unit because once we grant an accessory dwelling unit it is on that building forever. And that is what it says, it says an accessory dwelling unit.

B. Chivers: Well you can call it accessory dwelling unit with the condition that there is no permanent residency in there.

J. Szot: As someone said, I think it was Mark, he is not going to live there forever.

Brian Pratt: In our application, in our letter, we described very specifically what we are requesting. I have been to zoning boards for twenty years; I don't understand why we can't just put a condition on it. We requested very specifically what we are trying to do here. The previous owner constructed something illegally and we are here trying to make it right. Trying to get exactly what they need for their family. We are more than willing to put any restriction. I don't want to create extra work for the building inspector, but he is welcome to stop by and check it out.

B. Chivers: I think that is a reasonable proposal. A: the restrictions become incumbents on that property forever. Any subsequent buyers need to abide by those restrictions.

M. Raumikaitis stated that he is with Boyd on this.

Some discussion transpired regarding wording, alternative resolutions, precedence.

Abutters:

Karrye Berglund – 201 Tower Hill Road - Neighbor on the other side. The one concern I would have is not allowing it to be a separate, rentable unit. As long as those restrictions that were mentioned are enforced, I do not believe we have any further concerns.

Susan Krecklow: 201 Tower Hill: The only thing that bothers me is the separate septic that was put in, which means that it could be considered a second dwelling.

M. Raumikaitis: Confirmed with the abutters that they don't have an objection to the bedrooms and understanding the applicants' restrictions, confirming that those restrictions were acceptable to them.

R. Howe: Suggested that the restrictions be recorded on the deed at the Rockingham Registry of Deed.

B. Chivers: **Motion** to close public hearing. M. Raumikaitis: **Seconded**. All were in favor. **Motion passed.**

J. Szot: Closed the public hearing at 7:55PM.

Because this is a request for a variance, review of conditions:

Variance Criteria:

1. The variance will not be contrary to the public interest; Yes. All were in agreement/favor.
2. The spirit of the ordinance is observed; No
3. Substantial justice is done; Yes
4. The values of surrounding properties are not diminished; Yes
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

B. Chivers: **Motion** to deny request of the variance because they failed to meet all of the criteria in section 14:02C. R. Howe: **Seconded** All were in favor. **Motion passed.**

B. Chivers **Motion** to: "Approve a detached/separate 2 bedroom residential structure at 205 Tower Hill Rd. Map 411 Lot 2 subject to the following conditions:

1. That the unit not be equipped with kitchen or cooking facilities; and
2. The unit is occupied by the owner of the property or by family members of the owner; and
3. That the premises will not be rented; and
4. That the restrictions on the use be recorded at the Rockingham County Registry of Deeds."

B. Chivers: **Motion** to call the question. M. Raumikaitis: **Seconded** J. Szot: No. The rest were in favor. **Motion passed** 4-1.

B. Chivers: **Motion** to:

"Approve a detached/separate 2 bedroom residential structure at 205 Tower Hill Rd. Map 411 Lot 2 subject to the following conditions:

5. That the unit not be equipped with kitchen or cooking facilities; and
6. The unit is occupied by the owner of the property or by family members of the owner; and
7. That the premises will not be rented; and
8. That the restrictions on the use be recorded at the Rockingham County Registry of Deeds."

M. Raumikaitis: **Seconded**. J. Szot, No. The rest were in favor. **Motion passed** 4-1.

M. Raumikaitis: **Motion** to approve to refund the application fee for the appeal related to 23 Main Street. R. Howe: **Second**. All were in favor. **Motion** passed.

B. Chivers: **Motion** to accept the minutes as presented. M. Raumikaitis: **Seconded**. All were in favor.
Motion Passed

B. Chivers: **Motion** to adjourn: **Second** M. Raumikaitis. All were in favor. **Motion** passed. Meeting adjourned at 8.25PM

Respectfully submitted,

Amy M. Spencer

Land Use Coordinator

cc: file