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**TOWN OF SUTTON**

**Pillsbury Memorial Hall**

**93 Main Street**

**Sutton Mills, NH 03221**

**ZONING BOARD OF ADJUSTMENT**

**Draft Meeting Minutes**

**Wednesday, August 21, 2024 at 7:00 p.m.**

**Call to Order:** Chair Lick called the meeting to order at 7:06pm and took roll.

**Roll Call:** Derek Lick (Chair), Betsy Forsham, Donna Catanzaro, Zachary Brock, Melissa Ballinger (alternate)

**Absent:** Sam Gordon, Sondra Brake (alternate)

Derek Lick, Chair noted that Melissa Ballinger, alternate, would sit in as a voting member, as Sam Gordon was absent.

**Public Hearing:**

**1. Case ZBA 2024-06: Theo Selby, Map/Lot 01-406-086, 30 Rt. 114 - Variance for a Change in Use**

Theo explainedthat he and his wife have owned the building for 5 years. It had an existing daycare as part of it for years. In addition, they have owned a daycare in Bradford for 15 years. Since Covid, it has been a struggle to continue providing staffing in both locations. Mrs. Selby was able to merge her daycare kids from the Sutton location into the daycare in Bradford. They could possibly rent the building out to a business but it isn’t a very good location. They’d like to put a two-bedroom apartment in where the daycare was, and rent it out. There are currently two 2-bedroom apartments upstairs. They’d like to keep the upstairs apartments as “workforce housing” and the new apartment would be at market rate. The upstairs tenants have been there long-term, and it has been a good relationship.

Betsy thought that the application and presentation explained what their variance is for. Unfortunately, Sutton regulations do not allow “multi-family” dwellings (more than two families in one residence) in any zone, although she thought the plan sounded reasonable.

Donna asked about the septic system. Mr. Selby was noted that the septic was just updated in 2020 to accommodate for 22 children and the apartments. Betsy thought the Selbys should make sure the septic would be able to carry the load for an additional residence as it is different than that for a daycare. Mr. Selby said that they do not have a water problem, other than there is too much water, which had to be addressed by Capital Well. It is no longer an issue, however. Betsy felt that if the application were to be approved, the town’s building permit would require an updated approval from DES for the septic due to the addition of the 2-bedroom unit.

Chair Lick assumed that there were parking spaces enough for the upstairs residents; how many more were remaining? It was noted that there were easily 10 or 11 total spaces available at the site.

Chair Lick asked the square footage of the building. Theo said the first floor was 64’ x 24’, which is about 3,200 sq. feet total. The apartment would not be using the entire downstairs space as they would create some storage space and perhaps an office for their own use. It was noted that this building is among many others on the road and it is a bit bigger than the surrounding houses. It is about a mile from the Bradford town line.

The public input portion of the meeting was closed. It was time for the Board to deliberate amongst themselves.

Betsy said that the Residential/Agricultural zone allows for boarding houses, which is not more than four individuals, and two-family dwellings. Anything different would require a variance.

Chair Lick said a variance is being requested because nowhere in Sutton is it allowed to have a three-family residence. Melissa commented that the apartment across the Town Office has at least three apartments there. Chair Lick and Betsy said that the arrangement was grandfathered.

Chair Lick said the issue he sees is that the first four criteria for a variance are met without any question. The fifth criteria is the most difficult, which is the test of unnecessary hardship. Is there something unique about the property that would prohibit it for meeting the requirements that are stated in the ordinance? He said if they look at it that way, they can use the property as a business, as it has been used in this way in the past. Chair Lick said he had pulled some case history about hardship when it comes to a variance request. He shared a case from Portsmouth where the size of the building allowed for a variance. The variance makes it a reasonable use of the property. Given that, his initial reaction was that they should consider the building that is there on the parcel as a unique situation.

The other case Chair Lick shared had to do with a small lot with a garage that didn’t meet the requirements for a house to be put on the property. The Supreme Court overturned the refusal of a variance from the Town of Kingston, because it was surrounded by similar parcels that had residential units on them and they were all small lots. Others were used in this capacity and so it was allowed. He thought they should look at the size of the Selby’s building, the use, how much traffic it generates or had generated, and the purpose of restricting a multi-family dwelling that may not fit in this situation. His view was that a prior use with much more intensive use with plenty of parking that exists, is a unique nature of the parcel that couldn’t be found anywhere else nearby. Would it be an undue burden to allow a third residential use where it isn’t generally allowed, due to the size of the building that is already in a significantly traveled area? He doesn’t believe the purpose of the ordinance to not allow for a multi-family dwelling would be met because of the unique nature of this parcel in this location.

Betsy said it makes perfect sense but are they granting a variance and side-stepping the ordinance? If they think multi-family dwellings are needed in the town, the ordinance needs to be changed. She said there was a question on the Master Plan survey that yielded 42% against multi-family units (6 units or less). It was better received in or near the villages but not so much in rural areas. She thought perhaps the Planning Board could come up with an ordinance which would allow multi-family dwellings of, say, four units or less.

Chair Lick said legitimately they could justify this variance and it wouldn’t open the door to a 10-dwelling development. He felt it was very odd that they’d allow a four room boarding house and not make a provision for a three family property.

Donna said the limitation of what else they can do with the downstairs area could justify the variance request. This is a logical way of solving the issue. It helps the community to provide housing.

Zach said he agreed with Chair Lick; what else could that space be used for?

Betsy said she agreed and it makes perfect sense but it bothers her a little. She understands that this doesn’t set precedence. She said she was told by the Land Use Coordinator that, if approved, the Selbys would need a site plan review by the Planning Board and get a septic approval from DES for the change. She thought these should be conditions on the approval. Derek questioned the need for site plan review, as little will change except the interior of the building, which would be covered by a building permit application. Betsy suggested the Selbys contact Peter Stanley, Land Use Coordinator, next week, and ask if a site plan review is necessary.

**It was moved by Donna Catanzaro and seconded by Zach Brock to approve the variance for the reasons stated in the application and with respect to the undue burden criteria due to the unique property and its size, the site not being very conducive to a business use, and considering that there is adequate parking on the property, and that the approval be conditional on the applicant obtaining an updated septic approval to confirm the septic load for three, 2-bedroom units. The motion was approved unanimously.**

Chair Lick noted that there was a 30-day appeal timeframe where someone could ask for a re-hearing of the case. Anything they may construct or do before the 30 days is up would be at risk of being reversed.

**Administrative:**

**1. Review of Minutes from June 19, 2024**

**It was moved by Donna Catanzaro and seconded by Melissa Ballinger to approve the minutes as circulated. The motion was approved unanimously.**

**2. It was noted that we will have a case for our September meeting on the 18th.**

**3. Adjournment**

The meeting adjourned at 7:55pm.

Respectfully submitted,

Kristy Heath, Recording Secretary  
Town of Sutton