

TOWN OF RYE – BOARD OF ADJUSTMENT

Thursday, January 19, 2023

6:00 p.m. – Rye Town Hall

Members Present: Sandra Chororos, Chris Piela, Patti Weathersby, Rob Patten, John Tuttle (via Zoom)

Also Present on behalf of the Town: Planning/Zoning Administrator Kim Reed

I. CALL TO ORDER

Attending board members introduced themselves. Chair Weathersby explained the legal standard applied in order for the board to make a decision: was the board's decision unlawful, unreasonable, or has new information been presented that could not have been available at the time of the last meeting. It has not been alleged that any new information has been presented; rather, the board's decision from December 7, 2022 was contrary to law and clearly erroneous.

Chair Weathersby outlined the alleged three mistakes. The first dealt with jurisdiction: the JCE Trust should have had to file its own application for a certificate of eligibility for the apartment. The building inspector shouldn't have granted the certificate to JCE Trust. Second, the apartment for which the certificate was given was an accessory dwelling unit as that term is now defined in the zoning ordinance and not an independent dwelling. Third, the board should have imposed a ban on short-term rentals at the property due to the configuration of the neighborhood and the alleged undue stress on the easement by short-term rentals.

Chair Weathersby suggested the board review each item in order beginning with the jurisdiction issue regarding Burdette Realty's application for a permit, which was then issued to JCE Trust.

Member Piela stated his opinion that the property is, at best, a procedural argument. He pointed out that Attorney McGee claimed Burdette Realty "sold" the premises to a new owner, JCE Trust. However, there was no exchange of assets for property; rather, it was the conveyance of a property to a trust. He summarized that this isn't a strong argument.

Member Patten stated that he agreed with Member Piela in principle, but wondered if there is a zoning law stating that a granted permit needs to be reapplied for when the property is put in a trust. If the answer is no, what is the legal basis for an error?

Member Chororos pointed out that this was a sale within a family and wondered if that would be pertinent to the board's considerations.

Chair Weathersby explained that there is no restriction on transferring an application when a property is transferred. Permits are often issued to one entity and then purchased by another entity. She stated that this is a little different in that this permit was in process and noted that Ms. Morse testified that JCE had verbal permission to continue that application when it was

transferred to them. Chair Weathersby reiterated that there is no restriction on transferring the application and this transaction wasn't a sale, it was a transfer within a family, and there was no error by the building inspector in issuing a permit to the trust.

Member Patten pointed out that the board's decision would set a precedent for the building department.

Member Tuttle stated that he agrees with what's been discussed, and that the transfer was done for estate planning purposes.

Chair Weathersby addressed the second argument made by the petitioners that the apartment should have been approved as an accessory dwelling unit as that term is now defined in the zoning ordinance and not as an independent dwelling unit.

Member Piela stated his opinion that, in reading the definition of Accessory Dwelling Unit in our zoning, that an ADU needs an internal door to the main structure. This apartment, as it was presented to the board, does not have any internal doorway between the two living spaces. By that fact alone, it does meet the definition of an ADU.

Member Chororos agreed with Member Piela.

Chair Weathersby noted that an Accessory Dwelling Unit as the term is defined was part of a zoning ordinance amendment that came into being in 1998. This apartment existed prior to 1998. The applicant was not applying for the apartment to become an ADU, but to have the unit become a legal apartment. She also pointed out that the unit was accessory to the main house; there weren't two principal dwellings on the same lot. This was an accessory apartment, but not an ADU as it's defined.

Member Piela commented that he was using the standard of §190-2.2I, a legal apartment as defined in the zoning regulations. This seems to fall into that category, rather than the category of an ADU. In response to Member Chororos' question regarding connecting components, Member Piela explained that the unit has no internal door.

Member Patten pointed out §14 which states that, "An Accessory Dwelling Unit shall not be permitted in a detached accessory building" which further defines that this unit is not an ADU.

Member Tuttle agreed with Member Patten and Member Piela and pointed out that the application was to legalize the apartment not for an ADU.

Chair Weathersby added that there is a procedure in place to legalize apartments in §190-2.2I and that was the process by which this apartment obtained its certificate of legality. This process is for dwelling units that are not in the principal dwelling.

Member Piela pointed out that there is not a lot square-footage requirement in that section of our code. They weren't applying for two family units on a single lot; they were applying for conversion to a legal apartment. Therefore, two dwellings on one lot and 88,000 square feet is not applicable to this application.

Chair Weathersby addressed the third argument made by the petitioners that the building inspector erred and therefore the board should have imposed a restriction barring short-term rentals.

Member Piela stated his opinion is that there was no error. Pointing to §190-2.2I(3), he explained that the ordinance states, "The Building Inspector may place such conditions on the issuance of a certificate of legality as he/she deems to be in the interest of the public health, safety and welfare," but that it does not state the Building Inspector "must" place such conditions.

Member Patten asked whether the board is to determine whether Mr. Marsden made an error or the board made an error.

Chair Weathersby explained that the board would need to determine both and that one leads to another. She explained that the board was tasked at its last meeting to determine whether Mr. Marsden made an error. The board determined that Mr. Marsden did not make an error and came to the conclusion that the board could impose such a condition and discussed whether or not they should impose such a condition. After much discussion, the board determined that this was a town-wide issue, that there is no ordinance, and that the neighbors don't have this restriction, and so the board would not place any restriction.

Member Piela pointed out that this would be a good opportunity for an HOA to place restrictions voluntarily, but it would not be the position of the board to place such a restriction upon the property.

Member Chororos noted that the board asked the client if there would be any consideration of a break and the answer was no.

Member Patten, acknowledging that he wasn't present at the previous meeting, noted that while Mr. Marsden had the discretion to decide whether or not to place restrictions, even if he were obliged to place such restrictions, how would he foresee the presented problems.

Chair Weathersby explained that there was testimony by a neighbor that for one season the property was used for short-term rentals which caused parking issues and congestion. Mr. Marsden and the board were aware of the issues.

Member Piela explained the opinion of the board: imposing that rule on one property owner in the neighborhood, especially where there are other potential situations in that same area, would be unfairly burdening this single property owner.

Member Tuttle agreed that it would be unfair for the trust if the board were to impose any restrictions, and Mr. Marsden's discretionary use in this context is proper.

Member Piela discussed an argument made in point 17 regarding parking. Referring to the plans, Member Piela observed that the parking is compliant with §190-5.0. They need four spaces outside of the frontage, which they have. He noted that if renters were to park on the street or lawn, that's a conversation to be had between the renters and rentees but from the board's perspective, they meet the minimum parking requirements and don't require any variances.

Chair Weathersby noted that Mr. Marsden did impose occupancy limits; he felt that this would be appropriate but that a short-term rental would not be appropriate.

Member Piela discussed point 16 where it was noted that the property is on a private road. He wondered how that would apply to the potential of the board making an error and determined that it would not be applicable to the board's decision making.

Chair Weathersby explained that the board would vote on whether or not the board will grant the request for rehearing. If the board does choose to grant the request, the last meeting will be null and void. Or, if the request is denied, the board feels as though they did not make a legal error or act unreasonably in their decision.

Motion by Chris Piela to deny the request for rehearing and reconsideration by Attorney John McGee on behalf of Harold Kennedy & Mary Lynn Anderson of 1417 Ocean Blvd. Seconded by Sandra Chororos.

Vote: 5-0 (J. Tuttle, R. Patten, C. Piela, S. Chororos, P. Weathersby)

Motion by Chris Piela to adjourn at 6:26 p.m. Seconded by Sandra Chororos. All in favor.

Respectfully Submitted,

Emilie Durgin

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant: Attorney Jack McGee on behalf of Harold Kennedy & Mary Lynn Anderson of 1417 Ocean Blvd, Tax Map 17.4, Lot 9

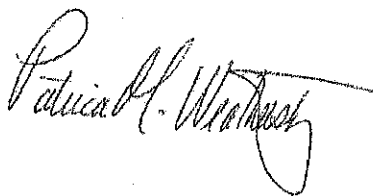
Property: 1419 Ocean Blvd, Tax Map 17.4, Lot 8
Property is in the General Residence and Coastal Overlay Districts

Application case: Cases #48-2022

Date of decision: 1/19/2023

Decision: The Board voted 5-0-0 to deny the Request for Rehearing and Reconsideration of the Board of Adjustment's December 7, 2022 denial of an administrative appeal from the Building Inspector's letter dated August 2, 2022 certifying an apartment at 1419 Ocean Blvd, Tax Map 17.4, Lot 8 as a legal apartment per Rye Zoning Ordinance §190-2.2.I.

Board determined its decision was neither unlawful nor unreasonable and no new previously unavailable information was presented in the Request.



Patricia Weathersby
Acting-Chair

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see *Article VII, Section 703 of the Town of Rye Zoning Ordinance*. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.