

TOWN OF ANTRIM
Zoning Board of Adjustment
Tuesday, February 27, 2024

MINUTES

Board/Staff Present: Diane Kendall, (Chair); Janet McEwen (Vice Chair); David Clater (Member); Shelley Nelkens (Member); Michael Ott, Member)

ZOOM: Carol Ogilvie, Board Consultant; Donna Hanson, Select Board Member; Rebecca Gennett, Applicant

Members/Staff Absent:

Others present: John Anderson; Planning Board; Dario Carrara, Code Officer; Marshall Gale, Fire Chief; Bob Edwards, Select Board Member; and Wayne and _____ Nichols, Abutters.

CTO: Chair Kendall called the meeting to order at 7:00 P.M., introduced the members and explained the procedure for tonight's meeting, the purpose of which is an application for two variances.

I. Public Hearing: Rebecca Gennett- A request for an "after-the-fact" approval for a variance from Article VII, Section C.5 to reduce the side building setback to 0 feet for a hot tub where a minimum of 20 feet is required; and a Variance from Article VII, Section C.9 of the Zoning Ordinance to convert a single family residence into a duplex with reduced lot size of 1.2 acres where a minimum of 130,000 square feet is required, and a reduced frontage of 152.22 feet where a minimum of 300 feet is required. The property is located at 133 Clinton Road, tax Map 233 Lot 040 in the Rural District.

Chair Kendall opened the public hearing and asked Ms. Gennett to present her case to the Board regarding her request for the variance from Article VII, C. 5 relative to the hot tub that is located within the setback.

Ms. Gennett stated that it has been in place for about a year, with a fence around it; also, she did not realize she needed a permit for this.

Ms. Kendall noted that the application is not properly filled out. She asked the applicant to respond to the five variance criteria:

#1. The variance will not be contrary to the public interest. Ms. Gennett responded that the hot tub is completely fenced in and not visible.

#2. The spirit of the ordinance is observed. Ms. Gennett stated that she was unsure how to answer that question.

#3. Substantial justice is done by granting the variance. Ms. Gennett stated that the hot tub is not doing any harm.

#4. The values of surrounding properties are not diminished. Ms. Gennett stated that because it is completely enclosed, it has no effect on abutting properties.

#5. Literal enforcement of the ordinance would result in an unnecessary hardship. Ms. Gennett responded that the use is reasonable and it is invisible.

Chair Kendall asked if there are any special conditions of the property that would justify the placement of the hot tub on the property line. Ms. Gennett stated that the property line is angled and the setback couldn't be met. She had received written permission from the neighbor and thought that was sufficient.

Chair Kendall then asked for comments from any abutters in favor of the application; there were none. Then she asked if there were any abutters in opposition. Wayne Nichols at 135 Clinton Road stated that Ms. Gennett knew she was in violation but she continued with the work anyway.

Chair Kendall asked if there were any other abutters or letters submitted; there was a letter from Mr. Durgin an abutter, but it was not signed, therefore not recognized by the Chair. Chair Kendall asked Ms. Gennett to respond to the comments, to which she stated that the hot tub is not in sight of the Nichols' house, to which Mr. Nichols stated that he does notice it; they can see the fence.

Chair Kendall asked if there were any other comments. John Anderson, Vice Chair of Planning Board, stated that the applicant's position is that there is no place else on the property for the hot tub, but what she is really saying is her hardship is that she has already installed it.

Chair Kendall then asked for Staff Reports

Fire Chief Gale: Mr. Durgin, an abutter, has called many times about this property. He has informed the applicant of the process and requirements. The Chief stated that he and the Code Officer have conducted several site visits to the property and have attempted to make the applicant aware of the requirements.

Code Officer Dario Carrara: He has still not received an application from a licensed installer for the hot tub. Homeowners can install their own, but this is now a two-family dwelling, with different requirements. He doesn't know whether it was installed by a licensed person. Nevertheless, it still needs a permit.

Conservation Commission: Written submission states that the property has no ranked wildlife habitat due to surrounding development. However, the ACC believes the applicant is requesting too many variances and the Board should consider dropping some. Chair Kendall stated that there is a specific procedure for the Zoning Board and they do not negotiate these things, they only act on the application that is before them.

Road Agent: No comment

Water & Sewer – NA

Police: Not in favor. Concurs with Chief Gale

Planning Consultant: Reviewed the application for completeness. Noted that the application did not follow the format exactly and did not address the five criteria specifically.

Ms. Gennett stated that the foremost issue is that the hot tub is already there and did not need to be wired. It was single family home at the time the hot tub was placed. The hardship is in fact the location because she tried to make it blend and not impose on neighbors or the traffic on the road.

At this point it was noted that the Board had not yet voted to accept the application as complete. Chair Kendall called for a motion.

On a motion by Michale Ott/seconded by Shelley Nelkens, the Board voted to accept the application as complete, with all in favor.

Chair Kendall then closed the public hearing at 7:42 and the Board entered deliberation, and began by going through the five criteria worksheet.

#1 & #2: Not contrary to the public interest and the spirit of the ordinance is observed. Chair Kendall stated that setbacks are for safety and privacy, and not about who the abutters are, because they can change. In her opinion, this application is contrary to the public interest and does not meet the spirit of the ordinance.

87 #3: Substantial justice is done. Chair Kendall stated that she did not believe that the harm to the
88 public is outweighed by the benefit to the applicant, and therefore substantial justice is not done.

89 #4: There is no diminution of surrounding property values. There was some agreement with this,
90 but Ms. McEwen felt there was diminution.

91 #5: Literal enforcement of the ordinance would result in an unnecessary hardship.

92 Chair Kendall stated that she believes there is a substantial relationship between the purpose of
93 the ordinance and this situation. She sees no hardship and no special conditions of the property.

94 Ms. Gennett stated that because of the diagonal property line, a previous owner had gotten
95 permission to build within the setback; and that there is no room to locate the hot tub within the
96 setback.

97 Chair Kendall stated that previous approvals are not relevant to this case. She then called for a
98 motion to take one vote for all five criteria at once.

99 *Motion by Janet McEwen/seconded by David Clatter to deny the variance based on the five*
100 *criteria not being met, with all in favor.*

101 Chair Kendall informed Ms. Gennett that she will receive the Notice of Decision within five
102 business days. She stated that the meeting would now take up the variance request for Article
103 VII, Section C.9. to convert a single-family dwelling into a duplex on a lot that does not meet the
104 requirements for a duplex.

105 The Board began to consider whether this application is complete for acceptance, which led to a
106 discussion about whether the relief requested was even proper, i.e., is the use really that of
107 lodging and not of a duplex, and if so, is that allowed in that district. Or is i

108 Mr. Carrara stated that his understanding was that the upstairs was converted to a living unit. He
109 did try to guide Ms. Gennett regarding her options, including converting part of the space to an
110 Accessory Dwelling Unit.

111 Given the questions that are now being raised, Chair Kendall suggested that Ms. Gennett might
112 want to withdraw her application and resubmit after she has met with staff to ensure she submits
113 a correct application.

114 Chief Gale stated that the unit is being advertised and rented and that there are serious fire/safety
115 violations that need to be addressed. Mr. Carrara noted that there is an ongoing court case
116 regarding the lack of permits and zoning violations, and that the court date has been suspended
117 pending the outcome of this hearing.

118 Chair Kendall noted that the applicant should have the opportunity to file a proper application,
119 although it is the applicant's responsibility to file a proper application. She understands that they
120 are not always easy to understand, and again suggests that Ms. Gennett withdraw the application
121 and refile with proper requests.

122 Mr. Nichols then raised other issues with the property, that Chair Kendall explained are not under
123 the purview of the ZBA.

124 Ms. McEwan asked Ms. Ogilvie if there was a benefit to either withdrawing the application or the
125 Board not accepting it as complete. Ms. Ogilvie stated that in terms of process it made no
126 difference; either way, Ms. Gennett would have to file a new application.

127 *On a motion by Michael Ott/seconded by David Clatter, the Board voted to not accept the*
128 *application as complete, with all in favor.*

Chair Kendall advised Ms. Gennett that her next step should be to meet with Town staff and resubmit. Ms. Gennett stated that the court date has been moved more than once, and she would like to move ahead now. Chair Kendall explained that the Board has already voted to not accept the application, therefore there is no action the Board can now take. Ms. McEwan noted that in her new application, she needs to determine what the use is going to be. Ms. Gennett stated that she thought she had filed property, and she that this hearing was going to determine whether she had a duplex or an Accessory Dwelling Unit.

Mr. Carrara reiterated that staff does its best to work with applicants, but there is only so much that can be done. It is ultimately up to the Board to accept an application, and up to the applicant to make sure that applications are properly filed.

Mr. Clater stated that for the new application, he would like to see a list of all of the ordinances with which the use is not in compliance. Ms. Ogilvie noted that, when she did her review, her understanding of the use was that it was a duplex, not that the property was being used as an Air B&B; had she known that, other issues would have been raised and reviewed.

At this point Chair Kendall thanked all involved for their work and participation in the hearing.

II. Review/Amend the drafted minutes from the Public Hearing on 2/13/2024

On a motion by Janet McEwen/seconded by David Clater, the Board approved the minutes of 2/13/2024.

III. Other Business

The Board discussed scheduling the next meeting, since Town Meeting is coming up and the next Board meeting after that is usually for organizational purposes. With several member absences noted, the next available meeting date is April 30, 2024

On a motion by Michael Ott/seconded by Janet McEwan the Board voted to adjourn at 8:35 P.M.

Respectfully Submitted,

Carol Ogilvie

Approved