



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

Memorandum

Date: May 17, 2016
To: Fran L'Heureux, Chair, & Members, Zoning Board of Adjustment
From: Timothy J. Thompson, AICP, Community Development Director
Subject: **Richard Elliot (petitioner) and Michael and Rae Ann Dopson (owner)** – Special Exception under Section 2.02.1(B)(2) of the Zoning Ordinance to permit an Accessory Dwelling Unit (ADU). The parcel is located at 4 Sunnysdale Drive in the R (Residential) and Aquifer Conservation Districts. Tax Map 5D-3, Lot 099. Case # 2016-22.

The following information is provided to aid in your consideration of the above referenced case. Additional background and application materials are included in your packet.

Background:

The petitioner seeks to construct an addition in order to accommodate 832 sq. ft. of heated living space for use as an Accessory Dwelling Unit (ADU) at 4 Sunnysdale Drive. According to the petitioner's floor plan, the ADU will consist of one bedroom, one bath, and a combined kitchen/eating area with an internal connection to the existing home. Pursuant to Section 2.02.1(B)(2) of the Zoning Ordinance, the petitioner seeks a Special Exception.

The subject property is located at 4 Sunnysdale Drive (Tax Map 5D-3, Lot 99) in the R (Residential) and Aquifer Conservation Districts. The lot upon which the home exists contains approximately 0.39 acres and is serviced by MVD water and municipal sewer.

According to the information submitted by the petitioner, the existing three bedroom single-family home contains a total of 1,702 square feet of heated living space (including the 50 square feet of new hallway). The petitioner's application indicates 832 sq. ft. of heated living space within the accessory dwelling unit. Based upon this information, the ADU represents approximately 48% of the heated living space of the principal dwelling unit (PDU) area. It should be noted that the square footage of the existing primary dwelling unit does not match the records in the Town's Assessing Database (which indicates 1,344 sq. ft of heated living space). The Assessing Department is copied on this memo to make them aware of this discrepancy.

The ADU is proposed to be constructed on the side of the existing dwelling. The ADU will not be provided with separate utilities and will have internal access; therefore it will remain functionally dependent upon the PDU. However, because the petition indicates a new second driveway is proposed as part of the construction of the ADU, this does not meet the requirement that the ADU

“shall not have provisions for separate utilities, garages, driveways, and other similar amenities.”
The Board can handle this in one of 2 ways:

- **Table consideration of the Special Exception until such time that the petitioner obtains a variance to allow for the second driveway to service the ADU** (*staff notes that a variance application could be processed under RSA 674:33(V) whereby the hardship criterion is essentially waived by the Zoning Board as long as the reason for the variance request is due to a “recognized physical disability” of the individual(s) requiring the variance*); or
- **Condition any approval of a Special Exception for the ADU to permit only one driveway** (which can either be the existing driveway or a new driveway with the existing driveway to be removed). The Special Exception can only be approved for the ADU if there is a single driveway serving the lot. (It should be noted that this requirement will also be contained in the new ordinance language for ADUs, see below “Staff Note”).

Staff Note regarding recent State Law Changes for ADU's:

Please also note that while it has been the policy of the Board in granting Special Exceptions for ADUs to require the recording of customary covenants regarding occupancy of the ADU by family members, as a condition of the Board's approval, staff no longer recommends such covenants to be recorded. The reason for this is the newly adopted state law which prohibits municipalities from restricting ADU occupancy to only family members (the property owner is, however, required to live in one of the dwelling units on the property). Although the new law does not have an effective date until June 2017, there are already proposed Zoning Amendments that are currently being processed by the Planning Board, which will ensure that the Town is compliant with the new law, and will no longer require any recording of covenants (regarding familial status) for ADU approvals. Staff will be consulting with the Town's Legal Counsel to determine how to handle the previously granted ADUs which have recorded covenants (our initial understanding is that all previously recorded covenants will no longer be enforceable, and the family member restrictions previously placed on ADUs will “expire”).

Standard of Review:

It is the burden of the Petitioner to demonstrate, to the satisfaction of the Board, that the conditions for the granting of a Special Exception, under Section 2.02.1(B)(2) of the Zoning Ordinance, have been satisfied.

Should the Board vote to grant the request for the Special Exception, Staff recommends that approval be conditioned upon the following:

1. There shall only be one driveway serving both the primary dwelling unit and the ADU per the requirements of the Zoning Ordinance. The petitioner can either utilize the existing driveway, or can construct a new driveway and remove the current existing driveway. In addition, should any driveway construction take place, the petitioner/owner shall obtain any necessary right-of-way permits from the Public Works Department;
2. The primary dwelling unit, ADU, and lot shall not be converted to a condominium or any other form of legal ownership distinct from the ownership of the single family dwelling. In order to assure compliance with this requirement, the property owner shall execute a restrictive covenant running in favor of the Town, which shall be recorded in the Hillsborough County Registry of Deeds and a copy provided to the Community Development Department and the Assessor prior to the issuance of a Certificate of Occupancy.

Ec: Richard Elliot, Petitioner
Michael and Rae Ann Dopson, Owners
Building Department Staff
Captain John Manuele, Merrimack Fire Department
Assessing Department

Cc: File
Correspondence