

TOWN OF TEMPLE, NH

ZONING BOARD OF ADJUSTMENT

March 4, 2021 Public Hearing

Minutes

Applicant – Thomas and Lauren Judd

ZBA Members present: John Kieley, Deb Deleso, Greg Robidoux, Bill Ezell and Gail Cromwell

Chair John Kieley called the hearing to order at 5:30 PM and notified the participants that this hearing was being held electronically pursuant to Executive Order 2020-04, Section 8, Emergency Order #12, Section 3.

Kieley asked each voting board member to state their name and indicate whether they were alone. All members present stated their name and indicated that they were alone.

Kieley mentioned that all of the required public hearing notifications were successfully implemented.

Kieley summarized the case which is an application for a Variance to construct a second detached accessory dwelling unit (ADU) on the Judd property at 163 Old Revolutionary Road, Temple.

Kieley named the voting members of the board and asked if any of them had any reason to recuse themselves. All answered they had no reason.

Lauren Judd then read a prepared statement (attached) summarizing why she felt the hardship standard related to the unique characteristics of the land had been met and generally why the proposal should be approved.

Kieley explained that the variance standards are set by the State and court decisions and not by the Town and that when considering the hardship standard (#5), it must be demonstrated that due to special conditions of the property, it cannot be reasonably used in strict conformance with the zoning ordinance.

Further discussion ensued between the applicant and the Board about the topography of the property particularly its conical nature with approximately 4 acres surrounding the buildings being the only flat area. Bill Ezell posted a Google Earth photo of the property which was very helpful.

While there was a general understanding that a flatter parcel would be more usable, it was noted that, in this general area, there are a lot of sloped parcels so this parcel cannot meet the distinguished from other properties in the area criteria.

The discussion moved on to other options that the property owners have. Those included:

- Build an attached ADU onto the existing primary dwelling. This would apparently require some modification to the septic system.
- Subdivide 6 acres encompassing the existing ADU which would then become the rented primary residence for that lot. The garage could then be converted to a detached ADU.

It was agreed that the hearing would be continued to allow the Judd's an opportunity to further consider their options.

Motion to adjourn the hearing until April 15, 2021 at 5:30 PM at 6:40 PM by Kieley, second by Gail and unanimously approved by roll call vote.



**5. Literal enforcement of the provisions of the ordinance would result in an “unnecessary hardship” because:**

of the unique topography of the land.

**a. For purposes of this paragraph, “unnecessary hardship” means that special conditions of the property distinguish it from other properties in the area.**

I’m on top of a hill and a significant portion of the lot is wetland. 13 of the 18 acres are not buildable. We cannot build in the property envelope. The only way to have reasonable use of the land is with the variance requested to utilize the buildable land and existing infrastructure.

Not granting this variance would be an unnecessary hardship because all land beyond the existing buildings and included in the unbuildable land is currently in established use. To take away currently used agricultural land would cause unnecessary hardship. Even if we wanted to move the existing fruit orchard and ag use to attempt to construct an allowable dwelling for our immediate family member, there would be no land to move it to because of the wetland and slope and a variance would still be required as it would be a second ADU.

**(i) Owing to these special conditions, no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:**

- Literal enforcement of the provisions of the ordinance does not allow for reasonable use of the land and does cause unnecessary hardship.
- Other properties with 18 acres would have buildable space. We do not because of the unique topography of this land.
- The use of this structure as an ADU would result in no change in visual impact or value to surrounding properties, or have an effect on town utilities.
- Any alternative to use of the existing structure as a second ADU directly results in the physical displacement of one or more people, the destruction of agricultural production on land that is currently in use, and prevents reasonable use of the land.
- At the last hearing there was a suggestion to explore the possibility of subdividing as a way to make reasonable use of the land, however after researching this, subdividing will not enable reasonable use of the land, again due to the unique topography and existing zoning ordinance. No fair and substantial relationship exists between the general public purposes of the ordinance and the specific application that would be submitted to determine

whether or not to subdivide in order to achieve reasonable use, because literal enforcement of the provisions of the ordinance would not allow for reasonable use of the land and would cause further unnecessary hardship.

(ii) The proposed use is reasonable since:

The dwelling may not be allowed through any other means and cannot be constructed on any other portion of the land due to the unique topography including slopes and wet lands.

**b. If the criteria in subparagraph (a) are not established, an “unnecessary hardship” will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.**

The following special conditions of the property make the variance necessary in order to enable a reasonable use of it:

The proposed variance has zero impact on neighboring property and ensures use of land is fully aligned with the town vision statement . Use of the existing structure to provide a dwelling for an immediate family member aligns with all related aspects of the town’s vision statement..

Under filial responsibility law I am obligated and reasonably concerned with my parent’s long-term care planning. Not allowing the variance will cause unnecessary hardship as owner and occupier of the land as it will prevent me from reasonably housing an immediate family member and maintaining current housing for a long term renter and their child. Pertaining to my obligations for long term care and financial responsibility for my aging family member who does not have other options for long term care, providing appropriate accommodations without impacting neighboring land or town utilities is reasonable and warrants a variance as opposed to strict conformance with the ordinance.

The proposed use is reasonable because:

The Town of Temple Master Plan states

- Temple should remain a rural town with a mix of forests, streams, wetlands, open space and farmland. Agriculture, forestry, trails and

outdoor recreation should be encouraged to maintain Temple's rural character.

Approval of this variance supports this as it maintains rural character, viewable from pack monadnock/ Miller State Park, an important aspect of outdoor recreation.

- Temple should have a sense of community that is the core of its rural character.

Approval of this variance supports this, the second point in the town's vision statement. A sense of community includes caretaking for aging immediate family.

- Temple's residents should have a diversity of socio-economic backgrounds and ages. Housing stock should be primarily owner occupied. Housing types and costs should vary. Temple should provide reasonable housing opportunities for low- and moderate-income residents.

This variance achieves point 3. Without this variance approved, our immediate family will have no reasonable opportunity for appropriate accommodation. The alternative to this is to have my immediate family member live far away in a state facility to live out their life. My immediate family member cannot afford to purchase their own property, we do have the building and if allowed will affordably house our immediate family member. Our existing ADU is an very affordable rental for a parent and child who otherwise would not be able to live in Temple, granting the variance achieves the town vision without compromising any aspects of the vision.

- Home businesses should be allowed and encouraged. Other businesses which have a scale and impact compatible with the town's rural character should be allowed when authorized by special exception. All business, housing and other structures should be developed and integrated into the town's working landscape, be environmentally suitable, and be acceptable to neighboring residents. Sustainable practices, including renewable energy, should be encouraged.

allowing the variance will avoid further buildings being erected as the variance seeks to allow for reasonable use of an existing building. Refusal of the variance would contradict the town vision for preserving rural character and the town statement that “all...housing should be integrated into the town’s working landscape”.

The proposed use of this existing building is acceptable to neighboring residents.

The Town’s vision states “Sustainable practices, including renewable energy, should be encouraged.” Both this ADU and the second ADU sought by this variance are green buildings, meaning that they are already constructed with renewable materials and were designed by an architect to maximize energy efficiency. They are already wired to a central energy station so that they may be easily hooked up for use with a renewable energy system.

- Temple should provide protections for its natural environment including surface waters,... view sheds, dark skies, and quiet background noise levels. Permanent preservation of undeveloped or sensitive land or water areas should be encouraged through conservation easements and purchases by private and public entities. Creative land development processes requiring permanent open space and agricultural uses should be encouraged to support the town’s desire to retain open space.

Allowing the variance supports the protection of the natural environment including surface waters, view sheds, and dark spaces. Our land is clearly viewable from Pack Monadnock. By granting the variance, fewer buildings will be constructed and more open space and agricultural space will be the result.

Literal enforcement of the zoning ordinance results in unnecessary hardship.

Approval of the variance allows for reasonable use of the land and has no effect on the town utilities, neighbors, or community..

It was suggested the the garage be relocated to near the primary dwelling, and attached by a roof line to allow for literal enforcement. I argue that the location

of the building is of little or no consequence to the town, but of great consequence to the owners. The location suggested is the play yard for our three children, easily visible from our kitchen. Is it intended that the ordinance be upheld at the expense of utility for the property owner when literal enforcement has no benefit to the town or community?