

STATE OF RHODE ISLAND

MINUTES
THE ZONING BOARD OF REVIEW
OF BRISTOL, RHODE ISLAND

07 OCTOBER 2024
7:00 PM
BRISTOL TOWN HALL
BRISTOL, RHODE ISLAND

BEFORE THE TOWN OF BRISTOL ZONING BOARD OF REVIEW:

MR. JOSEPH ASCIOLA, Chairman
MR. CHARLES BURKE, Vice Chairman
MR. DAVID SIMOES
MR. DONALD S. KERN
MR. TONY BRUM
MR. GEORGE D. DUARTE, JR., Alternate
MS. KIM TEVES, Alternate

ALSO PRESENT:

ATTORNEY ANDREW TIETZ, Town Solicitor's Office
MR. EDWARD TANNER, Zoning Officer

Susan E. Andrade
91 Sherry Ave.
Bristol, RI 02809
401-578-3918

I N D E X

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The meeting of the Town of Bristol Zoning Board of Review was held and called to order at 7:00 p.m. by Chairman Joseph Asciola at Bristol Town Hall, 10 Court St., Bristol, RI

1. APPROVAL OF MINUTES:

Chairman Asciola called for approval of the September 3, 2024 minutes

Mr. Simoes noted that he was present at the September 3, 2024 meeting, however his name was omitted from the cover sheet and asked that it be corrected.

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MR. SIMOES: Mr. Chairman, I'll make a motion to approve the minutes of the October meeting as corrected.

MR. BURKE: Second.

MR. ASCIOLA: All in favor:

MR. BURKE: Aye.

MR. SIMOES: Aye.

MR. ASCIOLA: Aye.

MR. KERN: Aye.

MR. BRUM: Aye.

X X X X X X

(MOTION WAS UNANIMOUSLY APPROVED)

(Minutes were approved)

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NEW PETITIONS:

2. **2024-31**

FRANKLIN DENNIS McCOOL

188 Poppasquash Rd.: R-40

P. 179, Lot 141

Dimensional Variance to construct a 30' x 32' accessory garage structure at a size greater than permitted for accessory structures in the Residential R-40 zoning district.

Ms. Sophath Toun, 118 Capital St., Cranston stated she was present to represent the McCools.

Mr. Burke noted the Board did receive correspondence from the property owner and applicant authorizing this representative.

Mr. Toun presented the Petition to the Board. She explained that the applicant would like to construct an additional structure to the property, 30' x 32, to house their equipment; they purchased a tractor, it has a snow attachment, shovel attachment, a golf cart. At this time all of this equipment is being stored outside and they would like to be able to protect it from the elements.

Mr. Burke stated that he did view the property and asked if the proposed structure was outside of the gate. Ms. Toun stated yes, there is a deer fence that is probably indicated on the site plan about a third of the way from the right. The deer fence encloses a third of the property, but it starts a third of the way up the property and confirmed it is not visible from Poppasquash Road.

The Board reviewed the site plan and plans in detail with Ms. Toun. The Board noted the property consists of 6.7 acres.

Ms. Toun confirmed there will be no upstairs, it will be open beam construction. There will be no water coming in, only light fixtures.

The Board discussed the fact that they have granted similar structures in the area that have similar acreage, and this would not be visible from the main roadway, and the request is for only 4 extra feet in each direction and would be 38 feet from the nearest property line.

No one spoke in favor or against the Petition.

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MR. BURKE: Mr. Chairman, I'll make a motion to approve application 2024-31 Franklin Dennis McCool and Jacqueline M. Savoie to construct a 30' x 32' accessory garage in the R-80 zone, where a 26' x 28' accessory structure is allowed by Ordinance and by right. The hardship from which the hardship seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area, and not due to an economic disability of the applicant. We've heard testimony and there is evidence in the application that this is to store maintenance equipment and to keep it protected from the elements. The hardship is not the result of prior action of this applicant. They bought the property approximately 24 years ago, so it was plotted out at that time. The granting of the requested Dimensional Variance will not alter the general characteristics of the surrounding area or impair the intent or purpose of the Zoning Ordinance or the Comprehensive Plan of the Town of Bristol. Accessory structures are allowed on residential property. This Board often grants some... for the large parcels that are characteristic of that neighborhood. In this case its over 6 acres of land. The hardship that will be suffered by the owner of the subject property if the Dimensional Variance is not granted will amount to

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more than a mere inconvenience. The maintenance equipment will continue to be stored outside in the elements. I so move.

MR. SIMOES: I'll second that motion.

MR. ASCIOLA: All in favor:

MR. BURKE: Aye.

MR. SIMOES: Aye.

MR. ASCIOLA: Aye.

MR. KERN: Aye.

MR. BRUM: Aye.

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(MOTION WAS UNANIMOUSLY APPROVED)

(Petition Granted)

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**3. 2024-32
JON M. EGAN**

**434 Metacom Ave.: R-10SW
Pl. 155, Lot 54**

Dimensional Variances to demolish an existing 12' x 22' detached accessory garage structure and construct a new 24' x 30' accessory dwelling unit (ADU) structure in its place at a size greater than permitted for accessory structures in the Residential R-10 zoning district; and with less than the required lot area for an ADU within a new accessory structure.

Mr. Jon M. Egan, residing at 1206 Middle Road, Portsmouth, presented the Petition to the Board. He explained that basically when these new accessory dwelling unit laws changed they were excited, because they were already planning to tear down the garage at the Metacom address. His father lives in South Kingstown, he just turned 74 and the idea is to move him closer to them. By right they can use the existing garage to build a structure there; it's just a little smaller than what they want. The plan was originally to go up and have two floors on the existing footprint. However, the variance they are looking for is that instead of going up, because he's older, looking to go out a little bit more and only one floor. In response to questioning by Mr. Simoes, Mr. Egan explained they would like to have two bedrooms because the idea is that if you want someone to stay or needs care 24/7 someday, the family could visit or something like that.

Mr. Tanner confirmed that there is a maximum of two bedrooms for an ADU, in the new State Law.

Mr. Tanner explained that the applicant was present for two reasons. The size of the accessory structure; it's an R-10 zone and the maximum size for any accessory structure, no matter what its used for, is 22' x 24'. The applicant is applying for a 24' x 30'; but also shows a plan of a floor plan of what a 22' x 24' could look like. The other Dimensional Variance needed is the new ADU Legislation allows new structures on lots that have at least 20,000 square feet;

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this lot has only a little over 10,000 square feet. So, you can have an ADU by right in an existing structure; however, the Legislation is a little vague on “existing”. It’s not existing as of the date of the Legislation. So, in theory, somebody could go and build a 22’ x 24’ structure and then make it an ADU, because now it exists. So, his discussion with the Solicitor was that the applicant has the right to come in and get a 22’ x 24’ ADU without coming to the Board. The applicant has come to the Board because they want to make it bigger, and they don’t have the full 20,000 square feet to go beyond what’s allowed.

Attorney Tietz in answer to questioning by the Board on the intention of the legislation that you can have one if it is over 20,000 square feet, but you can go in and build a new unit, a new unit and then convert it to an ADU if its less than 20,000; he stated “who knows”, they don’t know what the legislators intended and doubts that they did. This compromise Bill was presented to them 20 minutes before a vote on the floor and its better than the previous version from two years ago, which was totally unintelligible; but this one still has questions. Some people are interpreting that “existing” meaning existing as of the date of the Bill. Some people are saying existing as of the date of the 2022 Bill. They are basically saying that if he wanted to come in with a plan and said he wants to tear the garage down and build a 22’ x 24’ garage, and showed a plan of a garage, he could get a building permit. He’d have to build it, without the windows and have the garage doors and so forth and then once he has a Certificate of Occupancy for the garage, he could then come back and ask for a permit and say he wants to convert it into an ADU, because it is an existing structure. Certainly, there was an intent that 20,000 and above it was meant to be open season. This is a 10,000 square foot lot and was there an intent to limit it to only the stuff that was existing at that time, that’s a good question and he doesn’t know the answer.

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Mr. Burke stated that his concern as he's expressed it in earlier applications is that they're allowing more relief than what the intent was of the relief provided by the Legislation. People are coming in and asking for more than that. And he thinks that is plenty to have two or more dwelling units on a property that was designed by Ordinance to only have one.

Mr. Egan confirmed that his father does know he's moving. This lot also is a double lot, it has two driveways and looks like it's made for it. There is a master plan in the family that they will move his father into this ADU, his brother, wife and kids are going to inherit the home they grew up in, because housing is tough to afford these days. So this is a trickle down that he's looking to do for all of them.

Mr. Burke noted that its not particularly relevant if his father lives there or not, that's a factor in what they are trying to decide. It looked to him that there were five cars parked there and four of them at least were out-of-state cars. Mr. Egan confirmed that that is a rental and then across the street is a huge rental and those kids park all up and down River Street. He presently has three kids renting the property and confirmed that he also owns other properties in Bristol, and they are also rentals, rented out to students during the academic year and one is an Airbnb in the summer.

Mr. Burke made the statement that more than likely if Mr. Egan's father was to vacate the ADU it would be rented to students. Mr. Egan stated that the idea is that his father would live there for the rest of his life and then it is going to be built for an older person to live there; so that would be long term rented to someone else. He does live in Portsmouth presently and his father will live in Bristol, which will be closer than where he presently lives.

Mr. Burke stated that he is not enthused that a two bedroom will eventually be open up for a rental property.

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A detailed discussion was held on the fact that this could be built by right but with a second floor. The concerns are that if these types of variances are allowed, above what is allowed by the new Legislation, in the beginning, how many more people are going to come in for similar situations. If it was 20,000 square feet it would be one thing, 10,000 square feet is another and the ambiguity of what “existing” means. Discretion must be used in each case and whether or not their request is legitimate based upon their circumstances.

Mr. Egan understands that he could go up to 20 feet for a second floor, however given his father’s age the one-floor plan is more adequate for their needs. The one-floor 24’ x 30’ would be at a height of 14 feet.

A detailed discussion was held on which would have the greater impact to the surrounding area.

During the discussion on the vagueness of the legislation, Mr. Burke stated that it is vague because they rushed Legislation to the end of the Session and then they got people to sign it; that’s why its vague. And it shouldn’t be vague, because to him this is really important to the Town. Where there’s additional rental units on a single lot that was designed for a single family; and he understands the legacy places that were put up Downtown, but they’re not supposed to propagate that if it’s not to Code unless there’s a good reason for it. So, he doesn’t believe that there should be multiple dwelling units on a property. And the fact that the Legislation was passed that allows it; but they allowed it on a 20,000 square foot. Unless you already have a building there and then you’re allowed to convert it. And this doesn’t meet those guidelines; there’s no building that can be converted the way that the applicant would like; he has to build a new building.

Ms. Theresa Roberts, 432 Metacom Avene stated that she can respect the need and what he’s trying to do. However, she’s been living there for a little over a year, they just purchased

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the house, and there are a lot of college kids. They are great kids, mostly they're not super rowdy or super nasty or anything like that, but a lot of cars. In Mr. Egan's house alone, there are four cars parked there. Two will usually use the driveway and the other two will park wherever and then their friends go over. And the next house over does the same thing, and it gets tough. It's not just tough for her but for all the neighbors to come and go, it can get busy sometimes, so it gets a little congested with all the cars. She likes her privacy and to have more people living right around her would be tough.

Mr. Tanner stated that they Board also received a letter submitted via e-mail from a neighbor regarding similar concerns about parking. Mr. Asciola read the letter from Fernando M. Andrade into the record.

Mr. Tanner stated that the Ordinance requires two off-street parking spaces for the principal structure and then the new ADU Legislation requires at least one off-street parking space for the ADU.

Mr. Egan stated he presently has four off-street parking spaces and rents to only three tenants.

Upon questioning by Mr. Burke if the limit of five un-related people per rental is law, Mr. Tietz stated that the new Legislation concerning how many people can occupy a rental is one per bedroom. So, the limit is five and the one per bedroom is above. There also is the question of how one reads the piece. Mr. Burke stated that his point is that there are some real problems with the Legislation itself. Mr. Tietz stated that the goal of this Legislation is to increase housing, with the thought that increase in supply will help to lower the price; that's the goal. There is no hidden agenda there, this is an agenda that's out in the open that if you want to say what was the purpose of the Legislature; the purpose of the Legislature overall here is to increase housing

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opportunities and increase opportunities for creation of new housing units. Mr. Burke stated that under that interpretation anybody just builds a garage and then after the garage is done and they can convert it. Mr. Teitz stated he was correct if they have the lot area; it still has to comply with side yard lines and so forth. He stated that the Town may want to decrease the size of the allowable accessory units with heights and things like that. But at the moment it's what the Town has. If this 10,000 square foot lot happened to have a 24' x 30' barn on it, they could convert it. Although they have to limit the maximum square footage to 1,200 square feet. The Board could say no to the extra 30 feet and say yes to allowing him to build it one step or they can say no to both and make him go through the step of building the garage first.

Mr. Tanner stated that they have been learning as they go on. He doesn't want to play games with people and have them lie and put up a garage and then convert it. If you meet the minimum, Zoning, it's almost like the 20,000 doesn't matter. If it's 22' x 24' and Mr. Egan says he's going to make it an ADU and he just builds it as a shell, leaves it empty, and then comes in and says he wants to finish it as an ADU, he could do that. But he doesn't want to have to lie, and they have to give it to him by right anyway without going before the Board.

Mr. Tietz stated that the real reason he's before the Board is to get the larger one-story structure.

Mr. Burke stated that he has looked at Mr. Egan's properties and thinks a good landlord, but he would be more receptive if he didn't own a bunch of properties, including some outside of Bristol. Mr. Egan stated that because he does that, he's in the position to do this for his dad. If he didn't own a house, he wouldn't have the money to do it. In his eyes it's what's made the whole thing possible.

Mr. Brum stated that the Board has heard from the neighbors who are politely complaining about the number of cars that are parking. The size of this unit will dictate how many bedrooms it will have, how big they will be, and he will ask what the time frame will be to move his dad into the unit. It's going to be a brand-new unit, and he assumes they don't want college kids in there. Mr. Egan stated that from what he understands about six to eight months to build it and then going through the process of moving, so within a year-and-a-half; it will be vacant until he moves in.

Mr. Egan also stated that he would think that the one-floor unit would be better for the neighbors. If they do the two-floor, the bedrooms are going to overlook into the neighbors' back yards. And it would only make it difficult for his dad as he ages.

Mr. Kern asked if they could interpret "existing" as the time the Board gives approval. Mr. Teitz stated not really and read the Statute again and said he would say not. They've already given the interpretation, at least at the moment, the Town's interpretation of existing is such that it doesn't matter what the Board does, it would be granted as of right, once he applies for a permit for a garage, builds the shell, gets to a certain amount, get a C.O., then its going to be determined existing. So the Board is not able to interpret at this point. It may change down the road, but that's how it stands at the moment.

Mr. Burke inquired about building codes and believes Mr. Egan can't take the existing building and turn it into an ADU. Mr. Tanner stated he was correct, it wouldn't have the correct foundation, insulation and so forth. Mr. Tietz stated it could be converted, it would be more expensive than building a new one, but it could be. He's sure there's a fair number of carriage houses out there that could be converted just the way they are. Mr. Burke stated that dimensionally

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there's a minimum room size, one of the room sizes has to be 100 square feet. Mr. Tanner stated that's up to the Building Inspector.

Ms. Teves stated that then they were back to where they started, do they allow him to go bigger with one floor or build within the dimensions allowed but go up to two floors. It's a financial thing at this point, because it's going to cost him more money to go up than it is to just be able to do, if the Board allows the few extra feet, to do what he wants to do. But if they allow it and other people come before the Board and they want to ask for extra feet, the Board is up against the same thing every single time.

A detailed discussion was held on which way to go that would benefit the Town and the surrounding area.

The Board concluded that they let him build the 22' x 24', which is allowed by right and he does what he wants to do with that square footage.

Mr. Tietz instructed them to look this property, look at the lot and the neighbors and the neighborhood and look at it that way. The real question is if they want the larger one-story or the two-story, based on looking at that lot and the neighborhood. If the Board wants to go with the 22' x 24', then the Board has to make a motion to deny the request for the 24' x 30', which is before them. Then Ed will let him build the smaller one. Mr. Tanner asked that if that's the way the Board is going to go, put it in the Findings. Part of the Findings of Fact and the fact that he can do 22' x 24' by right.

In regard to Board member concerns that if the larger footprint is allowed what stops them from putting a second floor on in the further, Mr. Tietz stated that if the Board allows a variance for the larger footprint, then it becomes a Use by Variance, and they can't put a second story on without coming back to the Zoning Board. It's restricted by the Use of Variance.

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MR. BRUM: I'll be making a motion, File number 2024-32, Jon M. Egan for a Dimensional Variance; but prior to making the motion to deny I would like to make a Finding that the applicant would be entitled to an accessory dwelling unit structure in the place of the existing garage, provided that it would conform to the Dimensional Variances required for an Auxiliary structure, or an accessory structure rather, in an R-10 zone. The application is being denied. This Board does not feel that applicant is seeking the least relief necessary. The unique characteristics of the subject land do not impact this Board's decision, nor was there any prior action by the applicant that would have impeded the decision of this Board. The granting of this requested Dimensional Variance will change the characteristics of the surrounding area. As an accessory structure greater than the permit accessory structure dimensions of 22' x 24' would not be in accordance with the Town's Comprehensive Plan. And the hardship suffered by the applicant will not amount to more than a mere inconvenience, as specified previously, the applicant will still be converting the existing structure to a use of an ADU. On those reasons, I so move.

MR. BURKE: I'll second.

MR. ASCIOLA: All in favor:

MR. BURKE: Aye.

MR. SIMOES: Aye.

MR. ASCIOLA: Aye.

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4. ADJOURNMENT:

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MR. BURKE: Motion to adjourn?

MR. KERN: So moved.

MR. SIMOES: Second.

MR. ASCIOLA: All in favor?

MR. BURKE: Aye.

MR. SIMOES: Aye.

MR. ASCIOLA: Aye.

MR. KERN: Aye.

MR. BRUM: Aye.

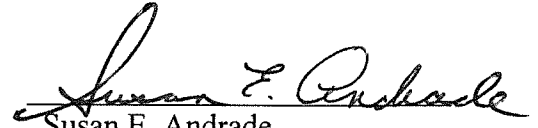
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(THE MOTION WAS UNANIMOUSLY APPROVED)

(MEETING ADJOURNED AT 8:05 P.M.)

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RESPECTFULLY SUBMITTED,


Susan E. Andrade

TOWN OF BRISTOL ZONING BOARD
MEETING HELD ON: 07 OCTOBER 2024

Date Accepted: 11-4-24

Chairman: 