Members Present: Hunt Dowse, Jon Grosjean, Dave Anderson, Paul Hertneky, Alison Rossiter, and Linda Coughlan, Secretary

Others Attending: Sheldon Pennoyer, John Jordan, Select Board liaison, Tom Shevenell, Laurie Bryan, Annemarie Algozzine, Howard Mansfield, Jim Frame, Kathy Anderson, Sharon Gordon, Sarah Laeng-Gillliatt and Jodie Simpson

7:00 P.M. – Tanner Hearing
Alison called the hearing to order and introduced the Board. She read the published notice and noted that fees had been paid and the notice had been published and posted. She said the voting members for the hearing would be herself, Hunt Dowse, Jon Grosjean, Dave Anderson, and Paul Hertneky who is an alternate but would be voting as a full member for tonight’s hearing.

Alison explained the procedure that would be followed for the hearing beginning with the applicant’s testimony, followed by the Board’s comments or questions, then the hearing would be opened to the public for those who wished to speak in support or in opposition of the application, and then the Board would move into the deliberative portion.

Alison asked Sheldon Pennoyer to present the applications. The consensus of the Board was they would hear the variance application first.

Sheldon presented a revised plot plan which showed the structure as being moved further back relative to the December 11th hearing. He said they were requesting a variance from the 20 foot side setback requirement. Sheldon said the existing 1 ½ story garage is located 10 feet off the easterly side property line. They are proposing to remove the existing structure and replace it with a new structure at the same 10 feet off the property line,

The Board moved on to review the testimony as presented in the application.

Applicant’s Testimony:

1) Granting the variance would not be contrary to the public interest because:
   Article 5.6.3.2 Property line setback. Currently there exists 1 ½ story garage which is located within the 20-foot setback, 10 feet off the easterly property line. Currently there exists a garage that is 10 feet from the easterly side lot line. In the 1990’s there existed a Music Studio Building 10’ off the easterly side lot line which was demolished by a previous owner due to the condition of the structure and replaced it with a new structure 10 feet off the easterly property line. This would create no significant changes and replaces the existing structure with a lower profile, and better scaled structure. Granting the variance would not be contrary to the public interest.

2) If the variance were granted, the spirit of the ordinance would be observed because:
   A. Article 5.6.3.2: There exists a structure within the 10-foot setback, so this is considered an existing non-conformity, and would be not less “non-conforming: By granting the variances it would do substantial justice.

3) Granting the variance would do substantial justice because:
Article 5.6.3.2: The existing garage sits within the 20-foot setback, so this is considered an existing non-conformity, and would not be less “non-conforming”. By granting the variance it would do substantial justice.

4) If the variance were granted, the values of the surrounding would not be diminished because:

Article 5.6.3.2: The proposed project will enhance the surrounding property values. The new structure will be lower in scale to meet the objectives of the Historic District. Granting of this variance would not diminish the values of the surrounding properties.

5) Unnecessary Hardship
A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:
   i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific of that provision to the property because:

The owner would be denied the use of the property as it was originally intended; a single-family house with an accessory unit. When the house was built in the 1970’s setback requirements did not exist resulting in the shape and size of the lot as it is today. Granting the variance would allow the property to be used as many downtown properties are used today. From a density perspective, reducing the use from the current three apartments to a single family house with a 768 SF Accessory Dwelling unit would reduce the overall traffic density of the property.

   And:
   ii. The proposed use is a reasonable one because:

The requested variance is consistent with other properties in the district and would fit into the neighborhood harmoniously.

B. Explain how, 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.

By not granting the requested variance, the property owners would be denied the use of the property that is consistent with the neighborhood and surrounding properties. Granting the variance will allow the property to revert to its original single-family use with an accessory dwelling unit that is harmonious to the surrounding properties. The owners are proposing to make a substantial investment into the property and the variance is required to allow the property to fit into the historic district architectural fabric.

Alison asked the Board if they had any questions. She asked if all of the other setbacks would be met with the plan. Sheldon said they would meet the 20 foot setback requirement.

Hunt brought up the hardship aspect if the variance was not granted. He said hardship usually deals with issues with land such as ledge or boulders. Sheldon said if they pushed the accessory dwelling unit closer to the house, it would block the view of the main house and encroach on their outside living area.
There being no further comments or questions from the Board, Alison opened the hearing those who wished to speak in favor of the application. There being no one, she opened the hearing to those who wished to speak in opposition of the application.

John Jordan said he was on the Planning Board from 2000 to 2008 and was part of the group who wrote the zoning ordinance. He referenced page 69 of the ordinance Article 13.3.1.1 which states, “No such non-conforming use shall be enlarged or increased nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance.” And Article 13.3.1.4 “Not additional Structure not conforming to the requirements of this Article shall be erected in connection with such non-conforming use of land”.

John added that he can’t see that not granting the application would cause a hardship. He commented that he feels the lot isn’t large enough for what they want to do.

Tom Shevenell said he doesn’t think a variance could be granted for this situation. He added that you can’t have an underlying variance for a special exception. Tom said as far as the demolition of the wing, according to the U.S. Department of Interior Standards, they don’t recommend demolition of a well maintained building in a historic district.

Tom added that he believes that they could use the existing structure for the purpose they are proposing.

Hunt asked Sheldon if in his professional view he thought this was the best design for the property.

Sheldon said he had been to the HHDC and they had advised them to go to the ZBA first. He said if they can’t move the wing, then they couldn’t move the garage; the rear wing of the house would get in the way. He said turning the building moved it closer to the main building.

Marsha Coffin asked if the old music studio was on the 10 foot setback line. Sheldon said it was but it had been in bad condition and had to be removed.

John Jordan said he thought this would have a significant impact on the property. It was a large piece of construction and didn’t think it was appropriate for Main Street. He also asked where they would put the snow”.

Paul Hertneky thought they should address the non-conforming use which came before the zoning laws were written. He questioned if the garage were removed and a new structure were to be built, would that create a non-conforming situation.

Hunt said he didn’t think it was an expansion of a non-conforming use. He said it’s a dimensional use and residential use.

Marsha asked if the existing building is taken down, are they proposing a new structure that will be on the same 10 foot set back but will be a much larger structure. She asked how far the front of the new garage would be from Main Street.

Dave Anderson said the front of the garage doesn’t have anything to do with the variance.
Sheldon said the new garage would be located 50 feet forward from the front of the existing garage.

Tom Shevenell said they needed clarification on the underlying issue of granting a variance in order to approve the special exception.

Hunt noted Article 15.6.1.4 relative to lot area that states the lot shall not be less than the minimum lot size for the pertinent District. He added if the lot size were smaller than the requirement they couldn’t grant the variance. Hunt said he did not believe the grandfathered use was germane due to the building being taken down.

Tom Shevenell said they are asking for a variance to the special exception requirements and does the ZBA have the ability to grant a variance that enables a special exception. He added he believes they should not proceed until they get some legal advice to avoid a potential appeal.

John Jordan questioned if the section in the ordinance relative to non-conforming use would apply in this case.

Hunt said he disagrees that it has anything to do with non-conforming use.

Sharon Gordon said she feels if they tear down the existing garage to build a new building they would have to meet the 20 foot setback. She added that she feels it’s not a hardship.

Dave Anderson said if they are taking down the building and replacing it with a new one, don’t they have to comply with the setback. Sheldon said that’s why they are asking for the variance.

Paul Hertneky commented if the HHDC doesn’t approve removal of the existing wing and a variance isn’t granted would that create a hardship.

At this point the consensus of the Board was to continue the variance hearing to February 12th after consulting with town council on the non-conformity aspect of the use. Questions to town council would be supplied to the applicant.

The Board moved on to review the testimony relative to 15.5 Special Exceptions – General Conditions as written and submitted by the applicants. (Note: The applicant’s responses, as noted on the written application, are included following each General Condition term and condition.)

1. The proposed use is similar to one or more of the uses already authorized in the District: There are several properties in the historic district that have accessory dwelling units or have several apartments on one lot.

Dave asked what other properties in the district had dwelling units. Sheldon answered that by saying there are buildings that have grandfathered apartments in the district.

2. The specific site is an appropriate location for the proposed use: Currently the property has three apartments of 1,000 SF or more. The proposed use would be as a single-family house with one accessory dwelling unit. This will result in a decrease in traffic density.
The consensus of the Board was that testimony shows this to be true.

3. The proposed use would not adversely affect property values of the neighboring properties:
   To the contrary: the owners are planning to make a substantial investment in the property which would have a positive effect on the neighboring properties
   The consensus was that this was a subjective investment with a positive effect.

4. The proposed use and the associated plans for parking, access and egress would not create a nuisance or serious hazard to pedestrian or vehicular traffic or excessive traffic congestion or create excessive wear and tear on public streets:
   The proposed conversion of the property will decrease the overall traffic density on the property.
   Hunt said reducing the number of apartments from three to a single family with an accessory dwelling was a lower impact on the neighborhood

5. The proposed use, following the installation of visual and noise screening measure by natural or structural means to the extent and in the manner as may be specifically determined by the Board would not create a nuisance to neighboring properties by reason of noise, odors etc., etc.
   The conversion of the property from three apartments to a single family and accessory dwelling unit will have a lower impact on the neighborhood. The attached site plan shows a new screen of planting was well as the building proposed as one-story garage and accessory dwelling unit to provided screening to the abutter to the east. The existing hemlock hedge to the west will be protected and maintained.
   Testimony showed this to be true.

6. Adequate and appropriate facilities will be provided for the proper operation of the use (where applicable) including facilities for potable water and disposal of waste:
   The property is connected to town water. A new septic system has been designed to the town and state for approval. The system has been designed to accommodate the accessory dwelling unit. Testimony showed the applicant had given information there was a new approved septic design.

7. The proposed use is consistent with the purposes and intent of the Zoning Ordinance and the Hancock Master Plan:
   The Special Exception meets all the conditions of the Special Exception requirements.
   The consensus of the Board was they would hold review on 7 once they review the pertinent Articles.

After review, Alison asked the Board if they had any questions.

Paul asked if there was a basement in the structure and Sheldon said no there was no basement. He then asked if there were going to be fire proof walls. Sheldon said yes that was a requirement.

There being no further Board comments or questions, Alison asked if there was anyone who wished to speak in favor of the application. There being no one, she asked if there was anyone who wished to speak in opposition of the application.

Nancy Macalaster asked if they turn the building would the setback on the back corner of the building meet the setback requirement. Sheldon said that back setback would meet the setback if they turn the building.
Tom Shevenell asked if the language would be correct as shown in the revised plan. Sheldon said the revised plan would reflect that language.

There being no further comments or questions, Alison closed the public portion and the Board moved on to review criteria for the Special Exception.

Criteria 1) 15.6.1.1: There shall be no more than one Accessory Dwelling Unit on each Lot, which shall include what were formerly accessory apartments.

The applicant is requesting a special exception to allow one Accessory Unit. Currently there are three apartments. The owner would like to convert the use of the property to a single-family dwelling with one Accessory Dwelling Unit.

The consensus of the Board was that this criteria had been met. The applicants were rearranging the building to one single family with an accessory dwelling unit.

Criteria 2) 15.6.1.2: The principal Dwelling on the Lot shall be single family dwelling. The Owner of the Lot shall occupy either the principal Dwelling or the Accessory Dwelling Unit.

The applicant intends to convert the property from three apartments to a single-family house with one accessory dwelling unit. The owner plans to occupy the single-family house.

Dave Anderson asked what would happen down the road if the building were to be sold would the new owner be required to live in the house or the accessory dwelling. The consensus of the Board was that they would have to comply with that requirement.

Criteria 3) 15.6.1.3: The Accessory Dwelling Unit shall be constructed within or (where permitted) attached to the principal Dwelling on the lot.

The proposed unit is attached to the principal dwelling unit. See attached plan.

The consensus of the Board was that this criteria had been met.

Criteria 4) 15.6.1.4: The lot area accommodating the principal Dwellings and the Accessory Dwelling Unit shall be not less than the minimum lot size for the pertinent District.

The lot consists of 1.063 acres. Zoning requires: 7.7.1.1 20,000 SF for the initial Dwelling unit plus 6.7.1.2 10,000 SF for each additional Dwelling unit. (30,000 SF).

Consensus of the Board was that this criteria had been met as shown by testimony presented.

Criteria 5) 15.6.1.5: Each Accessory Dwelling Unit shall have no more than two bedrooms or sleeping area and no more than 768 SF of Living Area.

The applicant is requesting a special exception for an Accessory Dwelling Unit of not more than 768 SF. See submitted plan.

Testimony shows the criteria had been met.

Criteria 6) 15.6.1.6 There shall be an interconnecting door between the principal Dwell and the Accessory Dwelling Unit which may be locked from time to time.

Dave asked if there was going to be an interconnecting door. Sheldon referenced the plan which showed there would be an interconnecting door.

The consensus was these criteria had been met.

Criteria 7) 15.6.1.7 Within the Hancock Historic District, the structure containing the Accessory Dwelling Unit shall comply with the Historic District Ordinance with respect to aesthetic matters.

The consensus was this criteria would be met since the applicants would need to file an
application with the HHDC.

There being no further questions or comments from the Board. Alison moved that the application for a Special Exception under Article 15.6.1 Accessory Dwelling Units be granted given that the applicant met all of the requirements under 15.5 General Conditions and all of the requirements under Article 15.6.1. Jon seconded the motion; the vote was unanimous in favor of the motion.

Alison advised Sheldon of the 30 day appeal period.

There being no further business, Dave moved to adjourn the meeting at 9:15 p.m. Hunt seconded the motion; the vote was unanimous in favor of the motion.

Respectfully submitted,

Linda Coughlan
Recording Secretary