

Zoning Board of Appeals
Town of Durham
15 Newmarket Rd
Durham, NH 03824

RECEIVED
Town of Durham

APR - 9 2015

Planning, Assessing
and Zoning

Dear Sirs:

We are formally requesting a rehearing of your decision rendered on March 11, 2015 denying a variance on the property at 29 Mill Road. Please see modifications to request attached.

Thank you for your consideration.

It is acceptable to us that we do not need to be notified of your decision within the 30-day requirement period, and you may, at your discretion, postpone your review until May.

Sincerely,

James Buckley
for Marc C. Maxwell, owner

BACKGROUND

Originally, the owner of the property at 29 Mill Road – Marc McConnell – sought a variance which would permit 4 rather than 3 unrelated primary family occupants to rent the house ***until it could be sold***.

Within, the owner is now requesting that the variance would only be granted until the termination of the existing lease, which is June 30, 2015.

NB: Compliance with the ordinance should be achieved by the end of May when the school year ends and 1 or more of the occupants vacates the house.

As expressed in the original request for variance, the owner and the occupants were led to believe that only family relationship was required, and that cousins would be satisfactory to meet the requirement. All parties signed the lease, in good faith, believing they were acting in accordance with the law.

The original request focused specifically on the:

- ± **number of occupants** – 4 rather than 3; and the
- ± **relationship of 2 occupants** – cousins rather than brothers.

Throughout the public responses to the request, no one addressed either basis for the request for variance. All responses were focused on students renting the property and the conduct of the students currently renting the property. One person stated that she had “made it a lifetime goal to prevent the spread of students into residential housing.” We do not believe the intent of the ordinance is to discriminate against students, but as it currently stands, the ordinance is being enforced for that purpose.

While neighbors take exception to a number of behaviors by the current occupants, none of those behaviors is illegal. Leaving a trash barrel at the front of the house is not illegal. Breaking a window is not illegal. Parking numerous cars in the driveway is not illegal. Even when the police were summoned to 2 parties, the students were dispersed, but police did not arrest anyone or charge anyone.

Admittedly, students behave differently than families, and the specific occupants of the property have been a nuisance both to some of the neighbors and to the property owner. **But the ordinance is not about students vs non-students**, and the request for a variance is not about students vs non-students. It is about the number of unrelated people who can occupy a dwelling without causing a risk of danger to the health or safety of the occupants. There is no research available or known that can validate or refute that 4 people are at all harmful as tenants let alone being **MORE** harmful than 3. Likewise, there is no research available or known that can validate or refute that cousins are harmful vs brothers, and nothing to support that cousins are **MORE** harmful than brothers as tenants.

The owner consequently, respectfully asks the Board to reconsider granting a variance to allow the cousins to qualify as family until the end of the existing lease – June 30, 2015.

(1) NO DECREASE IN VALUE

As previously noted, the property at 29 Mill Road is the second largest, most expensive and most highly assessed for tax purposes in the area. We were unable to find and research that showed a connection between the value of surrounding homes with whether or not there are 4 renters or 3, or if 2 of the renters are cousins instead of brothers – **which is the issue at hand**.

(2) NOT CONTRARY TO PUBLIC INTEREST

The Public Interest clearly is the peace and tranquility of the surrounding neighborhood, as well as the safety of the tenants. Everyone wants to have good neighbors, and the underlying assumption is that college students make bad neighbors. Certainly the behaviors and priorities of youth are not the same as those of mature people. But that is not a foundation for excluding them from living next door. “They aren’t like us” has been the basis for all discrimination throughout history, and while “college students” are not a protected class of people, they are also not – *or should not be* – the basis for this ordinance.

(3A-a) SPECIAL CONDITIONS/UNNECESSARY HARDSHIP

As previously noted, the size and value of the property at 29 Mill Road, make it difficult to sell or rent. The costs associated with the house narrow even the rental market to a small segment with sufficient funds to pay the rent and high utilities, as well as care for the exterior and interior of the property. The owner was able to find 4 young men to rent the house who are friends, 2 of whom are cousins, as well as colleagues in the Engineering School and from affluent families. Without this offsetting income, Marc would endure even more loss from the property - an unfair consequence for a man who tried to give his father peace at the end of his life.

(3A-b) REASONABLE PROPOSAL

The request to grant a temporary variance – permitting 4 unrelated people rather than 3 to comply with the zoning ordinance – is offered as a reasonable request because:

- ⬇ Under zoning ordinances, 11 people could be living in the house based on 1 person per 300 sq. ft.; the variance request is only for 4 people – a match to the number of bedrooms on the second floor;
- ⬇ The request is **not** meant to last *in perpetuity* – **only until June 30, 2015**. The house is going back on the market July 1, when the current lease expires.
- ⬇ The 2 young men who are cousins come from a very close family and feel/act as brothers, and might also be considered via variance to qualify as “related” without meeting the primary family condition.

To re-encapsulate the key factors:

- ⚡ Despite his original intentions to occupy the house with his family, the owner lives in Boulder, Colorado, and is unable to do so (although he tried, the traveling for his job was very hard on his family and himself).
- ⚡ As a result, the house was placed on the market for sale. But needed to be rented when it did not.
- ⚡ The house is large and expensive, resulting in a very small segment of potential renters.
- ⚡ The owner is already incurring a financial loss on the property.
- ⚡ The house was rented to 4 young men - in good faith - with all parties believing they were complying with the law.
- ⚡ The school year is almost over, and it is not unreasonable to permit the current occupants to remain until June 30, 2015.

Under these circumstances, we respectfully request that the Board grant a temporary variance to the ordinance permitting up to 4 non-primary family members to rent the property until June 30, 2015.

Thank you for your consideration.

Marc C. McConnell

April 9, 2015