



TOWN OF DURHAM
ZONING BOARD OF ADJUSTMENT
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Town of Durham
JAN 22 2020
Planning, Assessing
and Zoning

VARIANCE

Prior to seeking a variance, the property owner must have been denied a building permit by the Building Inspector or denied an approval by the Planning Board.

Name of Applicant Thomas W. Duncan, Jr. and Anne E. Duncan

Address: 14 Elderberry Circle, Sudbury, MA 01776

Phone # (978) 621-1531 Email: tduncan14@mac.com / emerdunc@me.com

Owner of Property Concerned Same
(If same as above, write "Same")

Address: Same
(If same as above, write "Same")

Location of Property: 560 Bay Road, Durham, New Hampshire 03824
(Street & Number)

Tax Map & Lot number Map 19 Lot 19-7

A Variance is requested from Article(s) XX Section(s) 175-109 (G)(3) of the Zoning Ordinance to permit:

An accessory apartment of 1,735 square feet where only 850 square feet is permitted.

The accessory apartment will be located in the R and RC Zone.

All applications must include a statement explaining how the applicant meets each of the five (5) statutory requirements for granting a variance, (A) through (E), which are found on page 2. (See page 3 for guidance.) The Zoning Board of Adjustment may consider the variance application incomplete if these five statements have not been addressed. In addition all applications must be accompanied by adequate plans and exhibits.

THOMAS W. DUNCAN, JR. AND ANNE E. DUNCAN

560 BAY ROAD

APPLICATION FOR VARIANCE FOR DETACHED ACCESSORY APARTMENT

A variance is requested from Article XX, Section 175-109(G)(3) of the Zoning Ordinance to permit a detached Accessory Apartment in a size exceeding 850 square feet where such size is not permitted.

INTRODUCTION

Thomas W. Duncan, Jr. and Anne Duncan purchased property located at 560 Bay Road, Durham, New Hampshire in 2017. It is their intention to construct during the next year or so a single-family residence on this property. As well, they wish to construct an accessory apartment to serve the needs of their adult children and future grandchildren as well as family friends. The proposed accessory apartment of 1,735 square feet is approximately 270 feet from Bay Road. It will contain living space of 1,465 square feet and will contain two bedrooms and kitchen facilities. The accessory apartment will also contain 270 square feet which will be devoted to various operational needs connected to the adjacent pool.¹

STANDARD OF REVIEW:

1. No decrease in value of surrounding properties would be suffered because:

The Applicant is proposing to construct an accessory apartment in excess of 850 feet. The apartment is approximately 270' to the northwest of Bay Road and will not be seen from neighboring properties. See Exhibit 1, Lot Grading Plan dated 8/23/19, prepared for Thomas and Anne Duncan by Bedford Design Consultants (hereinafter the "Site Plan"). The apartment will contain 1,735 square feet, and of this amount, 270 square feet will be devoted to pool related needs. See Exhibit 2, Duncan Residence, dated 11/19/19, prepared by Bonin Architects for Thomas and Ann Duncan (hereinafter the "Floor Plan"). The balance of the space will be devoted to living space. The apartment will be used in conjunction with the single-family residence which itself will have 4,900 of finished square feet. The apartment will have no visual impact on abutting properties and the size of the accessory apartment will be proportional to the size of the primary residence. Further, the lot on which the single-family residence and the

¹ Since the living area of the accessory apartment will contain 1,465 square feet, an argument can be made that the relief sought should be based on 1,465 square feet. However, out of an abundance of caution, our application requests relief for 1,735 square feet which includes both the living area and the area devoted to pool related needs.

accessory apartment will be situated is located in an area which contains similarly sized lots and dwellings. Taking all of these factors into account, the proposal will not result in a decrease in value of surrounding properties.

2. **Granting this variance would not be contrary to the public interest because:**

The grant of the requested variance will not unduly and to a marked degree violate the zoning objective's basic zoning objective. Nor will the grant of the variance alter the essential character of the locality, or threaten the public health, safety or welfare.

The definition of "accessory apartment" under the Durham zoning ordinance indicates that it is a dwelling unit in an accessory structure, and the structure must be an accessory use for a single-family residence. The presence of an accessory apartment does not alter the status of the single-family residence. There is no explanatory text to indicate why there is a size restriction on an accessory apartment, but an inference can reasonably be drawn that it is intended to keep the size of the accessory apartment proportional to that of the primary residence, thus ensuring that the accessory apartment truly remains an "accessory" use to the single family residence and not take on an identity of its own.

The proposed accessory apartment will be shielded from public view, will be appropriately sized in relation to the size of the single-family residence and will be incorporated into the overall construction proposal which will include a single-family residence and a pool. These factors indicate that granting the variance will not violate any basic zoning objectives. Further, granting the variance to allow an accessory apartment of the proposed size will not alter the essential character of the local properties on Bay Road nor will it threaten public health, safety or welfare.

3. **Owing to special conditions of this property that distinguish it from other properties in the area, denial of the variance would result in an unnecessary hardship because:**

The property contains an existing shared driveway which services both the subject parcel and Lot 19-6. See Exhibit 3, Tax Map with Overlay (hereinafter the "Tax Map"). The proposed location of all improvements need to be sited in a manner which will utilize the existing shared driveway. As well, the applicants would like to retain as much of the existing tree coverage as possible and the area adjacent to the proposed location consists of challenging slopes. The configuration of the property does not provide an opportunity for the applicant to create one large structure to house all of the intended occupants.

- a. **No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:**

The general public purpose of regulating the size of the accessory apartment is to ensure that the accessory apartment retains its identity as a complement to the single-family residence and that it does not become a de facto primary use. In this instance, the size and configuration of the lot allows for a generously sized and proportioned single-family home of approximately 4,900 finished square feet. The 1,465 square feet of space devoted to living area in the accessory apartment is proportional to the square footage of the single-family home and is consistent with the notion of the apartment being an accessory use to the single-family home.

- b. **The proposed use is a reasonable one because:**

The accessory apartment will not be viewed by abutters and is proportional in size to the single-family residence. At the same time, the proposed size of the accessory apartment meets the need of the applicants to provide comfortable and spacious quarters for visiting family and friends.

4. **By granting the variance substantial justice would be done because:**

In examining the balancing test required by this variance criteria, there is no demonstrable harm to the public or to individuals if the variance is granted. The benefit to the applicant in granting the variance is that the applicant will be able to construct an accessory apartment of a size which will complement their development proposal, and which will allow them to meet the present and future needs of their family. Under these circumstances, the benefit obtained by the applicant in granting the variance will not be outweighed by harm to the public and the variance must be granted.

5. **The use will not be contrary to the spirit and intent of the ordinance because:**

Under New Hampshire law, the interpretation of this criteria is identical to that of the public interest criteria discussed above.