



TOWN OF ROCKLAND ZONING BOARD OF APPEALS

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FINDINGS AND DECISION OF THE ZONING BOARD OF APPEALS

Case No.: 2023-09

Date: July 5, 2023

Decision: Denial of Use Variance

Applicant: Odeylton DaSilva & Francyslene Nincao

Property Address: 104 West Water Street, Rockland, Massachusetts 02370

The Rockland Zoning Board of Appeals has considered the application submitted by Odeylton DaSilva & Francyslene Nincao, 135 Mill Street, Abington, Massachusetts, for a use variance pursuant to Zoning Bylaws Sections 89.1, Zonin Variances; 415-10, R-3 Residence Zoning District; and 415-29, Number of Buildings on a Single Lot, to allow one additional residential unit in a free-standing garage on a lot where there is an existing two-family house at the premises known as and numbered 104 West Water Street, Rockland, Massachusetts. The property is located in the R-3 Residence Zoning District, Section 415-10 of the Bylaw, and is further identified as Lot 144, Map 45, on the Rockland Assessor's Maps. The owners of the property are Odeylton DaSilva and Francyslene Nincao, 135 Mill Street, Abington, Massachusetts.

The Board certifies that it has complied with all statutory requirements relative to notice to abutters and new publication of notice of the public hearing and has filed copies of this decision and all plans referred to herein with the Town Clerk, Planning Board, and the Building Department pursuant to Mass. Gen. L. c. 40A, Section 11.

Advertised: June 1, 2023, and June 8, 2023, in the Patriot Ledger.

ROCKLAND ZONING BOARD OF APPEALS
DECISION – DENIAL OF USE VARIANCE
APPLICANT: Odeylton DaSilva and Francyslene Nincao
ADDRESS: 104 West Water Street

The Board lastly has taken into consideration testimony of the applicant, the public, the application materials, plans and revised plans, and communications from various Town boards, abutters, and with interested parties.

A virtual remote Public Hearing was held via Zoom at 7:34 P.M. on June 20, 2023.

ATTENDANCE:

Board Members: Robert C. Rosa, III, Gregory Tansey, Robert Baker, Jr., Robert Baker, Sr. and Stephen Galley.

Also present: Land Use Counsel Attorney Robert W. Galvin.

MEMBERS VOTING: Chair Robert C. Rosa, III, Gregory Tansey, Robert Baker, Jr., Robert Baker, Sr., and Stephen Galley.

DISCUSSION:

The Chairman of the Zoning Board introduced the members of the Board advising the public that the hearing is being recorded.

The Chair asked the members of the ZBA for a roll call vote to open the public hearing. The ZBA members then took a roll call vote:

Robert C. Rosa, III – Yes, Gregory Tansey – Yes, Robert Baker, Sr. – Yes; Stephen Galley – Yes, Robert Baker, Jr. – Yes. The vote was unanimous and the public hearing was opened.

The Chair read the advertised notice in the Patriot Ledger with a Public Hearing Date of June 20, 2023.

The applicant, Odeylton DaSilva, stated that he was looking for relief for the free-standing garage which was being used as a source of income as a residential dwelling unit with tenants.

The Chair asked the applicant about permits. The applicant stated no permits were pulled, and he saw the structure as extra income. He stated no permits for water or sewer were pulled.

The Chair then opened the meeting to the Board for questions. Gregory Tansey had no questions.

ROCKLAND ZONING BOARD OF APPEALS
DECISION – DENIAL OF USE VARIANCE
APPLICANT: Odeylton DaSilva and Francyslène Nincao
ADDRESS: 104 West Water Street

Robert Baker, Sr. asked if it was a friend or family member renting the unit. The applicant stated it was a tenant, not a family member. Mr. Baker then asked about water and sewer which applicant answered were tied into the original house.

Mr. Baker, Sr. then read an email dated May 11, 2023, from the Superintendent of the AR Joint Water Works into the record and stated that sewer use was based on water usage.

Mr. Baker, Sr. then read an email dated June 15, 2023, from Deputy Fire Chief Thomas Heaney into the record. The application stated that the smoke detectors were hard wired but were not inspected by the Fire Department.

Robert Baker, Jr. has no questions.

Stephen Galley asked the applicant when they purchased the house and when the garage was renovated. Applicant answered bought in 2017 and garage in 2020.

The Chair stated that a 3rd dwelling unit was not allowed in an R-3 Zone and applicant stated he did not know that, was trying to be as clear as possible but needed the extra income.

Attorney Galvin opined that a separate residential structure was not allowed unless the garage was connected to the main residence and treated as an accessory apartment. He further said that the applicant should consult with a lawyer and the applicant stated that he would.

The Chair then opened the meeting up to members of the public, asking if any of the attendees would like to speak either in favor or opposed to this applicant.

No one spoke in favor.

The following spoke in opposition to the requested relief:

Thomas Henderson, 102 Arlington Street

Sandy Jackson, 117 West Water Street

Margaret Grafton, a resident of the street (address inaudible).

Stephen Kozakiewicz, 112 Arlington Street.

ROCKLAND ZONING BOARD OF APPEALS
DECISION – DENIAL OF USE VARIANCE
APPLICANT: Odeylton DaSilva and Francyslene Nincao
ADDRESS: 104 West Water Street

The Chair then opened the hearing back up to the members of the Board.

Robert Baker, Sr. questioned whether the applicant lives in either apartment in the main dwelling unit. The applicant stated he lives in Abington and is renting it out.

The Chair stated that none of the residential units are owner occupied.

The Chair asked the members of the board for a motion to close the public portion of the meeting. So moved by Robert Baker, Sr.
Seconded by Robert Baker, Jr.

The ZBA members take a vote: Robert Rosa – Yes, Robert Baker, Sr. – Yes, Gregory Tansey – Yes, Robert Baker, Jr – Yes, Stephen Galley – Yes. The vote is unanimous, and the public portion of the hearing has been closed.

The Chair read to the applicants the appeal process and stated a decision would be made later the same night after the public portion of the hearing, and that they were welcome to stay and await the result. The Chair also stated that if the relief was granted, one of the conditions would be to always show the Building Commissioner proof of recording of the decision.

DELIBERATION:

Stephen Galley wanted to know whether a denial meant that the applicant could not come back before the board for a period of time. Gregory Tansey said that it could be denied without prejudice. Attorney Galvin opined that the rule in Rockland follows the state law and if a variance is denied they cannot come back for the same thing for two years unless they get consent of the Planning Board and permission of the ZBA (Chapter 40A, Section 16). If the variance is denied they cannot come back for the same project for two years functionally but if they do something differently and the Board approves it, then it's a possibility of a different project. Mr. Tansey is also correct that it can be denied without prejudice and there is the possibility they can come back before the Board within two years but that is up to the Board.

Mr. Rosa asked how the Board could even contemplate approval when it's not allowed in the zone at all.

Mr. Baker, Sr. stated they could connect the two houses on one lot with a porch.

ROCKLAND ZONING BOARD OF APPEALS
DECISION – DENIAL OF USE VARIANCE
APPLICANT: Odeylton DaSilva and Francyslène Nincao
ADDRESS: 104 West Water Street

Mr. Rosa stated they would then not need a variance as it would be multiple units in one building but then it would be a three family which is still not allowed in the R-3 zone. There is not any way, shape or form that the Board can use to approve this. No permits were ever pulled and the town was never contacted, nobody knew anything and there was another driveway put in which does not meet current standards either.

DECISION ON VARIANCE:

Robert Baker, Sr. made a motion to deny the use variance.
Seconded by Robert Rosa.

The ZBA members take a vote: Robert Rosa – Yes, Robert Baker, Sr. – Yes, Gregory Tansey – Yes, Robert Baker, Jr – Yes, Stephen Galley – Yes. The vote is unanimous and the variance is denied.

REASON FOR DECISION:

The Board found that even if the structures were connected by a porch, creating multiple units in one building, it would then be a three family which is still not allowed in the R-3 zone and the applicant did not meet the criteria for the use variance including demonstrating that (1) there were conditions and circumstances unique to the applicant's lot, structure or building and do not apply to the neighboring lands, structures or buildings in the same district; (2) a strict application of the provisions of the bylaw would deprive the applicant of reasonable use of the lot, structure or building in a manner equivalent to the use permitted to be made by other owners of their neighborhood lands, structures or building in the same district; (3) the unique conditions and circumstances are not the result of actions of the applicant taken subsequent to the adoption of this bylaw; (4) that the relief, if approved, will not cause substantial detriment to the public good or impair the purposes and intent of this bylaw; and (5) the relief, if approved, will not constitute a grant of special privilege inconsistent with the limitations upon other properties in the district.

The Board discussed there was nothing unique about the soil, shape, or topography of the lot that caused a substantial hardship justifying the use variance to add an additional unit in a detached garage and that the

ROCKLAND ZONING BOARD OF APPEALS
DECISION – DENIAL OF USE VARIANCE
APPLICANT: Odeylton DaSilva and Francyslène Nincao
ADDRESS: 104 West Water Street

granting of such a variance would not be consistent with the intent or purpose of the bylaw.

NOTE:

- ❖ This decision may be appealed to the District Court, Housing Court, Land Court or Superior Court pursuant to Chapter 40A, Section 17. Said appeal must be filed within twenty (20) days after this decision is filed with the Town Clerk.
- ❖ Chapter 40A, Section 11, states that in part, that no variance or Special Permit shall take effect until the Town Clerk certifies that twenty (20) days have elapsed, and no appeal has been filed.
- ❖ This Board certifies that copies of this decision have been filed with the Planning Board as well as with the Town Clerk.

FOR THE ZONING BOARD OF APPEALS

By: 
Robert C. Rosa, III
Chair