

**ZONING BOARD OF ADJUSTMENT
OCTOBER 3, 2012 MEETING
DRAFT MINUTES**

Board members present included Chairman Christopher Carley, Nicholas Wallner, David Parker (for case #30-12), Robert Harrison Jr. (for all but Case 30-12), Jim Marshall and Ben Kelley. Also present were Zoning Administrator Craig Walker and Clerk of the Board Rose Fife.

30-12 Matthew S. and Katherine Miskoe: Applicant requests a variance to Article 28-4-1(h), Table of Dimensional Regulation, to permit a building addition with a side yard setback of 20 feet where 40 feet are required for property at 130 Little Pond Road in an RO Residential Open-Space District.

The Board for this case consisted of Carley, Parker, Wallner, Marshall and Kelley.

Attorney Maria Dolder testified. Kathy Miskoe, property owner was also available to testify.

Attorney Dolder testified that they would like to build a 2 car attached garage. They are in an RO zone which has large setbacks. The property is 2.64 acres. The location of the septic system makes no other area useable. They will keep a 20 foot side yard setback. The house was built in the 1950's and was placed prior to zoning setback requirements. The only other location to place this garage is where the septic tank is located. It is surrounded by much larger properties. This zoning district has large setbacks and allows for cluster developments, but this property is too small for that use. A two car attached garage is a reasonable use. All other residential districts in the city have no larger than a 15 foot side setback. The use is permitted by right. The property cannot be developed as is allowed by right in the Table of Uses. The intention of the Ordinance is met. There are two car garages in the area. There will be no adverse effect to abutting property owners. It will be aesthetically pleasing.

Parker stated that the lot looked like they had a garage there already. Ms. Miskoe stated that it was a hobby shop. They never used it as a garage. Parker asked when it was built. She stated that it was built in 1999.

In favor: none.

In opposition: none.

Comments from Code Administration: Walker stated that in 1998 an identical request was brought to the ZBA and denied at that time. Walker Stated that the Supreme Court has ruled rule in Town of Atkinson v. Malborn Realty that a significant change in law would be grounds to rehear a case a that had been previously heard. In this case there had been several changes to the variance criteria interpretation since 1998, Simplex, Boccia and Legislative that could affect the application of the variance criteria and for that reason it was not necessary for the Board to consider if this was a new case.

DECISION: A motion to approve was made by Wallner, seconded by Marshall and passed by a unanimous vote. Wallner was persuaded by the argument that the other properties have garages.

29-12 Joseph Abbate: Applicant wishes to remove an existing enclosed 6'2" x 52' porch and stairs located on the south side of a 5 unit residential building and replace it with a 12' x 52' open deck and stairs and requests a variance to the following:

- 1) Article 28-4-1(h), Table of Dimensional Regulations, to maintain and expand a rear setback of 10 feet where 30 feet are required,
 - 2) Article 28-3-2(d)(2), Uses Prohibited in the One Hundred (100) Year Floodplains and the F1 District, to permit the replacement and expansion of a structure for residential purposes within the one hundred year floodplain,
- for property at 14 Eastman Street in a CN Neighborhood Commercial District.

The Board for this case and all cases thereafter consisted of Carley, Marshall, Harrison, Wallner and Kelley.

Joseph Abbate, owner testified. Pete Johnson, general contractor also testified.

Mr. Abbate stated that he would like to take down his side porch. It is not functional and is falling down. He would like to replace it with a 12 foot deck with a landing. Walker stated that they just need relief for the rear corner of the porch.

Wallner asked if 2 tenants have access to the porch. Mr. Abbate stated yes, two have access right now and there is an emergency exit for a tenant on the second floor that egress passes through the enclosed area of the porch. He would like each of his 3 tenants to have a section of the porch.)

Mr. Abbate went on to say that the house was built in 1902. Harrison asked if they were going to put a roof over the deck. (No.)

Kelley asked if he could accomplish what he wants with a narrower deck. (Not really as he would like each tenant to have a section to put a table and chairs out to enjoy.)

Mr. Abbate went on to say that he wanted to improve the functionality and aesthetics. It would provide more direct egress for safety.

In favor: none.

In opposition: none.

Comments from Code Administration: none.

DECISION: A motion to approve the requests was made by Marshall, seconded by Harrison and passed by a unanimous vote.

Marshall felt that the expansion is in the rear so there is very little impact; it's aesthetically pleasing; it's a reasonable size. The Flood Plains are not impacted by the deck. Wallner was persuaded by the safety issue.

32-12 Christine and William Duffy: Applicant requests a special exception under Article 28-2-4(k)(A)(1), Table of Accessory Uses to A Principal Residential Use, to establish a Child Day Care (accessory use A-1) for up to 5 children in accordance with Supplemental Standards, Article 28-5-9(b) for property at 48 Taylor Lane in an RM Residential Medium Density District.

Christine and William Duffy testified. Mr. Duffy stated that they are now an unlicensed day care as they are under the number of children that the State of NH allows without a license. They have a couple of part-time children that overlap which creates a problem. They are only asking for 2 more children. Mrs. Duffy stated that the house was built in 2008.

Wallner asked if they had a fenced in yard. (Yes.) Is there staff? (No, just Mrs. Duffy and her husband is home 2 days a week and helps.) They have a playground area marked out. They have a 16x24 deck and they explained the site layout.

Marshall asked if the State of NH License would restrict them to 5 children. Mrs. Duffy stated no, but the Fire Marshall requires a suppression system if there are 6 children there. They do not want to do that.

In favor: none.

In opposition: none.

Comments from Code Administration: Walker went over the supplemental standards for a special exception.

DECISION: A motion to approve the request was made by Wallner, seconded by Harrison and passed by a unanimous vote.

33-12 John Chorlian for Ruth Weeden Reingold: Applicant wishes to convert an existing single-family dwelling constructed prior to 1945 to a 2 family dwelling and requests variances to Article 28-5-3, Conversion of a Residential Building,:

- 1) Section (b)(1), Minimum Lot Size, to permit a conversion on a lot with 9,732 square feet where a lot size of 10,000 SF is required,
- 2) Section (b)(2), Other Dimensional Requirements, to permit a conversion on a lot with 66 feet of frontage where 100 feet of frontage is required,

For property at 13 Rumford Street in an RN Residential Neighborhood District.

John Chorlian and Ruth Weeden Reingold testified.

Mr. Chorlian went over the location of the property. The house is approximately 3,000 s.f. of living space with an attached barn. It is a long narrow lot with parking in the rear. There is not a lot of yard left. Ms. Weeden Reingold has owned this property for 30 years but has not lived there for the last 5 years. She has been trying to sell it. The home is too big, too old and on a small lot. Converting it to a 2 family makes sense. There would be two 1500 s.f. units. It is in character with the neighborhood. The lot size is a bit smaller than needed. There would be no physical changes to the exterior, including the parking. A two family home is in the spirit and character of the neighborhood. There are 16 properties in the area – three 2-family; seven 3+ family and 5 single family homes. Hardly any of those meet the lot size requirements. Across the street from this home is the RD zone which has smaller lots sizes; 7500 s.f. The last 2 years the Board has granted 5 conversions on less than required lot sizes. The lot was created long before the creation of the Zoning Ordinance.

Wallner asked how many properties of the 16 was multi family. Mr. Chorlian stated that 10 were. Marshall asked what was on each side of the property. Mr. Chorlian stated that there is a single family home to the north, three family to the south. Marshall asked if there was adequate parking. Mr. Chorlian stated that there are 6 spaces. Ms. Weeden Reingold stated that her neighbors were in support of this. It has been difficult to even rent the house.

In favor: none.

In opposition: none.

A letter received in the Code Administration office via email was read into the record from Roger Wellington who lives 2 doors down in support of the application. Amy Lorenberg, 17 Rumford Street signed the email.

DECISION: A motion to approve the requests was made by Wallner, seconded by Harrison and passed by a unanimous vote. Wallner felt that 2/3 of the surrounding properties are multi-family homes on substandard lots.

MINUTES: A motion to approve September 2012's Minutes was made by Harrison, seconded by Wallner and passed by a unanimous vote.

A TRUE RECORD ATTEST,

_____, CLERK
ZONING BOARD OF ADJUSTMENT