

Appeal From an Administrative Decision
Steven & Philomena Landrigan
Map 122 Lot 002 Zone ARR

I. Question Presented – Should the ZBA reconsider its decision of July 2, 2015 to deny the appeal of abutters Steven and Philomena Landrigan and thereby affirm the Administrative Decision of the Board of Selectmen to issue building permit #15-043 (hereinafter the Permit) approved on May 14, 2015?

II. Brief Answer – The ZBA has the power to reverse itself at any time prior to final decision if the interests of justice so require.¹ 81 Sutton Road, as purchased in 2007, consisted of a single family residence with a principal dwelling unit, and an Accessory Dwelling Unit (hereafter ADU) as defined in Article II, Section 18 of the ordinance (the ADU provisions having been adopted in 2004). Completion of the alterations by the permit issued would result in a two family residence (as defined by Article III, Section 42 of the ordinance) which would result in an increase in occupation density that does not further the express purpose set forth in the ADU criteria and could adversely effect the character of the residential district where it is situated. Furthermore, such alteration would constitute a change in use for the structure, which would require a variance. The Board believes these issues were not fully explored before the July 2 decision and should be re-examined.

III. Statement of Facts

Sandra Rouse (hereafter Owner) made application to the Selectmen for a building permit for 18 Sutton Road (Map 122 Lot 002) on 2/19/2015 for “adding required safety measures, fire alarm system, sprinkler system, some additional fire escapes, new 2” water main to building, 4 new windows, moving a few bathrooms around so we can properly divide the 2 units that are currently inside the property”² The Selectmen approved the application on 5/14/2015 and issued a Building Permit the same day.

Abutters Steven and Philomena Landrigan requested an Appeal From an Administrative Decision under RSA 674:33 on 6/2/2015. After Notice was given, a hearing was set for 7/2/2015.

¹ See *74 Cox Street, LLC v. City of Nashua*, 156 NH 228 (2007).

² Application, p.1.

At the time of the hearing, Owner stated there were three buildings on the property, and one was currently used for two dwelling units, one with nine bedrooms, and one with one bedroom.³ The renovations would result in use for two dwelling units, each with five bedrooms.⁴

Owner purchased the property in 2007 from Walter & Marlene Graf.⁵ The Grafts purchased the property in 1986 from the Pellerin family (aka Pelfor Corp.)⁶ 18 Sutton Road is located in the ARR District. The present lot size is 2.43 Acres. The ARR District permits any use in the Residential District, with the extent of that use governed by Lot Area Requirements⁷. Two-family dwellings in the ARR zone require 4 acres at a minimum.⁸

Until recently, owner has lived in the property since purchasing it in 2007.⁹ Owner let rooms continuously since purchasing the property. There have been some complaints by neighbors over the years regarding the tenants.¹⁰ The property was the subject of a Notice of Violation dated 12/29/2010. At the time of the violation, the Zoning Administrator confirmed the existence and use of two dwelling units “the main house and the legal nonconforming apartment jutting from the southwest corner of the main house.”¹¹

The Notice of Violation addressed the use of a third dwelling unit “located in the space that was formerly a home office operated by the Pellerin family (aka Pelfor Corp)(hereafter the “office”)...”¹² This home office area is separated from the main house by a two-car garage with unfinished attic space above.¹³ “Compliance will require conversion of the former Pelfor Corp office space into something other than a dwelling unit (usually this involves elimination of the kitchen facilities).”¹⁴

Owner sent an email to the Zoning Administrator on 1/26/2011 confirming “I will have all kitchen equipment moved out of the office/apartment area at 18 Sutton Road by the end of June 2011.”¹⁵ It is unclear from the record, which kitchen equipment was removed, whether from the legal nonconforming apartment jutting from the southwest corner of the main house, or from the office area, after the tenant had vacated the premises.¹⁶

The legal nonconforming apartment jutting from the southwest corner of the main house contains approximately 432 sq. ft. not counting the loft area.¹⁷ It is attached to the main house.¹⁸ It contains internal

³ Hearing 7/2/2015.

⁴ Id.

⁵ MCRD Bk 3030 Pg 0128.

⁶ Notice of Violation, p.1. (See also MCRD Bk 1624 Pg 328).

⁷ New London Zoning Ordinance, Article VI, Paragraph A.1.

⁸ New London Zoning Ordinance, Article VI, Paragraph B.2.

⁹ Hearing 7/2/2015.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Hearing 7/2/2015, (See also Tax Assessors Card).

¹⁴ Id., p.2.

¹⁵ Property Tax File 122-2.

¹⁶ Hearing and minutes 7/2/2015.

¹⁷ Assessors Tax Card

¹⁸ Id.

access to the main house.¹⁹ It has only one bedroom. The main house contains 1,955 sq. ft. not counting the second floor.²⁰ The main house is more than five years old. The property contains 16 parking spaces²¹.

Owner's proposed renovations include partitioning the entire structure for use as two five-bedroom dwelling units. This requires closing off the two-car garage entrance, replacing the garage door openings with exterior walls and four new windows, conversion of the garage area to living space, conversion of the unfinished attic area above the garage into bedrooms, in addition to adding required safety measures, fire alarm system, sprinkler system, some additional fire escapes, new 2" water main to building.

IV. Discussion

The ADU provisions of the New London Zoning Ordinance were adopted at the 2004 Town Meeting.²² At the time Owner purchased 18 Sutton Road, it was used for two dwelling units, one main house with nine bedrooms, and a pre-existing legal nonconforming apartment jutting from the southwest corner of the main house with one bedroom. The apartment fits squarely within the definition of an ADU under the ordinance then in effect at the time of purchase. There was evidence presented as to the continuous use of the property for residential purposes. The apartment is between 300 sq. ft. and 1,000 sq. ft. and is 22% of the original dwelling unit, counting only the first floor area. Internal access to the unit from the main house has been maintained. The owner has lived on the property since purchasing it, and the apartment contains only one bedroom. There has been no change in the use from that of residential. Because the residential use consists of two dwelling units, a main dwelling and an accessory dwelling unit, on a lot less than 4 acres in the ARR District, this constitutes a pre-existing nonconforming use of the property.

Owner states in her application a desire to "mov[e] a few bathrooms around so we can properly divide the 2 units that are currently inside the property". The "2 units" consist of the finished areas of the main house and the legal nonconforming apartment jutting from the southwest corner of the main house (the ADU). It does not include the garage, or the unfinished attic above it, nor the office.

The use of the building has not "morphed" into a legal pre-existing nonconforming two-family dwelling use simply because the owner, in violation of the notice dated 12/29/2010, may have removed the kitchen equipment from the apartment, instead of removing it from the office, nor does the use of the property become two-family merely because unrelated parties have lived in the units over the years, and the owner has not been cited for any violations.

Arguendo, even if there is a finding there was a legal pre-existing nonconforming use as a two-family dwelling, without an ADU, the proposed renovations would constitute an expansion of that non-conforming residential use.

¹⁹ Property Tax File, BP94-37, dtd 6/2/1994 (Denied), Attachment, signed by Marlene M. Graf.

²⁰ *Id.*

²¹ BP15-034, Application p.7/8.

²² New London Zoning Ordinance, Article II, Paragraph 18 (p.17).

V. Conclusion

Owner retains a structure used for residential purposes of the main house with nine bedrooms and the the ADU with one bedroom. Any legal nonconforming use shall not be expanded.²³

Therefore the Board should:

Decide on its own to hold a rehearing²⁴ before the end of the appeal period, and

AFFIRM the decision of the Selectmen to issue Owner a Building Permit limited to: “adding required safety measures, fire alarm system, sprinkler system, some additional fire escapes, new 2” water main to building”; with conditions as originally stated on the permit, and

REVERSE the decision of the Selectmen and **DENY** Owner a Building Permit to “move a few bathrooms around so we can properly divide the 2 units that are currently inside the property”.

This decision shall not preclude Owner from pursuing other relief in the form of Variance or Special Exception should Owner desire to increase the tenant density on the property.

²³ New London Zoning Ordinance, Article XX, Paragraph A.2.

²⁴ See *74 Cox Street, LLC v. City of Nashua*, 156 NH 228 (2007).