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ZBA mtg 7/2/15

TOWN OF NEW LONDON

APPEAL OF THE ADMINISTRATIVE DECISION OF THE SELECTBOARD TO ISSUE A
BUILDING PERMIT #15-034

MEMORANDUM

Submitted on behalf of Sandra Rowse in support of the
Selectmen's Issuance of the Requested Building Permit

Introduction

Steven and Philomena Landrigan, an abutter to the subject premises, filed an appeal from the administrative decision of the Board of Selectmen to grant the requested building permit to implement safety improvements and arranging interior partitions of a pre-existing non-conforming building. In short, we support the Town's determination that the property in question is a legally pre-existing, constitutionally protected, two family dwelling and that the proposed renovations as set forth in the approved, but not yet issued, building permit must be allowed to proceed and, accordingly, respectfully request that the New London ZBA deny the pending appeal.

Historical Background

The Pelfor Corporation owned the subject premises, operating a home office in what is referred to as the "main house" and having two dwelling units, both located within the "main house" (as opposed to the barn and other outbuilding). The Town has long been aware of the existence of a second living unit and has deemed it a legal, nonconforming building. See letter of Peter Stanley to Sandra Rowse dated Dec. 29, 2010. The Town's letter dated Dec. 29, 2010 instructed Ms. Rowse to eliminate a third kitchen facility in order to come into compliance with the Ordinance and the pre-existing status of the building.

In the instant fact scenario, the use of the "main house," located on lot A as shown on the "Annexation Plan prepared for Pelfor Corporation," prepared by Kear-Wood, Inc., dated June 9, 1980 and recorded in the Merrimack County Registry of Deeds as Plan #6295, comprises the premises that are owned by Sandra Rowse by Warranty Deed of Walter A. Graf and Marlene M. Graf dated November 9, 2007 and recorded in the Merrimack County Registry of Deeds at Book 3030, Page 128. It is clear from the within referred-to Plan (copy attached) that the property

purchased by Ms. Rowse in 2007 existed as two separate tax map lots. The second dwelling unit within the main house existed on a separate lot of record, Parcel A of 1.11 acres until 1980 when Pelfor Corporation, with the approval of the New London Planning Board, chose to add additional land from the abutting Lot 1 and Lot 2 as shown on the Plan, bringing the acreage of the subject lot to 2.54. Accordingly, the main house was not located on a 13 acre parcel within the past 4 years as suggested by the Landrigans.

In 1980, the New London Zoning Ordinance permitted single-family or two-family dwellings in all residential districts. *Article IV, (A) (1)*, attached. Article V, Agricultural and Rural Residential District, of the 1980 New London Zoning Ordinance stated that “no lot shall be less than two acres.” *Article V, (B) (1)*, attached. The density at that time would have been one family per two acres. *Article V, (B) (2)* attached. Accordingly, the density on this lot has been a pre-existing, non-conforming aspect, as the only designation in the Ordinance in existence in 1980 was a one or two-family residence. There was no separate category for accessory dwelling units. Additionally, it is clear from the configuration of the existing building that the additional dwelling unit was added to a building that has existed since approximately 1790 according to the “non-public” display from MLS which has been submitted to the public by Mr. Landrigan. The same MLS listing indicates that it is an income producing property. This historic property has had a long history of mixed residential and business/commercial use.

Discussion

In 1980, the Zoning Ordinance did not differentiate between an “in-law apartment” and a two family dwelling, and to date, there is still not a separate zoning classification for an “in-law apartment.” However, it meets the definition of a dwelling unit under the current Ordinance, *Article II, (43)*. It seems logical that the MLS listing indicated that there was business use within the building that also contained two dwellings. Mr. Landrigan’s emphasis on “single family” designation in the MLS listing as well as the tax card is misplaced. In fact, it was because there had been a third kitchen located within the “main house” that allowed the Ms. Rowse, buyer, to use that space as a third “dwelling unit.” Ms. Rowse was advised by the Town’s December 29, 2010 Notice of Violation to bring the property use back into compliance as a two-dwelling residence rather than a “multi-family” which would have required a variance. Ms. Rowse removed one kitchen as she understood to have been requested by Mr. Stanley. There has been no abandonment of the use of the building located on Parcel A as a two- dwelling or two-family. Abandonment would have to be

demonstrated, as NH case law provides for a two pronged test. First, Ms. Rowse would have had to show an intention to abandon or relinquish the use of a second dwelling in the house; and secondly, there must be evidence of an overt act or failure to act which carries the implication that the owner neither claims nor retains any interest in the use. *Lawlor v. Salem, 116 N.H. 61 (1976)*. Ms. Rowse sought to comply with the Town's notice but clearly maintained the two family status of the property. In fact, she and her sister began sharing the kitchen that remained, even though their bedrooms could be accessed only separately, otherwise they would have to go through the other dwelling.

The New London Zoning Ordinance, Article III, #43, defines a dwelling unit as one room or rooms connected together, constituting a separate, independent housekeeping establishment that is physically separated from any other rooms or dwelling units which may be in the same structure. It is also clear from the layout of the building that there had been various additions to the structure which housed at least two dwellings and a home office as reflected on both the tax card and MLS listing as submitted by Mr. Landrigan.

The use of the property for residential purposes has not changed. The use is permitted in the zone in which the property is located and there is no request to change the use of the property. The building is non-conforming; however, as it is a pre-existing two-family structure located on less than four acres. Article XX, (C) (2) specifically provides that a lot, such as the subject parcel, with less area or frontage than required, which is lawfully established, recorded and taxed as a lot of record before the enactment or amendment of the ordinance, "shall be deemed a conforming Lot." The proposed reconfiguration allows for the implementation of current safety measures and a better layout which allows a different manner of continuing the two-family status.

It is noteworthy that of the submissions of the Landrigans, the article by C. Christine Fillmore, Esq., as submitted by the Landrigans, contains a comment by the Landrigans conceding the two family status of the property prior to what the Landrigans have mistakenly stated to have been a subdivision of the parcel in question within the last few years. (See Comment entered under the third paragraph on that page.)

There has never been an abandonment of the operation of the property as a two family residence. There has, however, been an effort to maintain the aesthetics of an historic property while keeping it financially viable, just as have all predecessors to Ms. Rowse. By the inception of zoning in 1958, the property had already been subject to mixed uses on this high-profile corner at the

intersection of local highways and the longstanding location of a commercial dining and drinking establishment (The Grey House, circa 1932) that has evolved to house a brewery and entertainment venue.

The use of the property with the reconfiguration does not have a substantially different effect on the neighborhood than its current configuration and existence. This is especially true given the configuration of this parcel such that it is bordered by roads on two sides and the house itself sits at the corner of the property closest to the intersection of NH Route 11 and NH Route 114. As the exterior of the building is not at issue, the current aesthetics of this historical structure will remain intact.

Conclusion

Ms. Rowse's proposed improvements do not constitute a substantial change in the use of this property for residential purposes on the neighborhood. Under the NH Supreme Court's ruling in *Hampton v. Brust*, 122 N.H. 463 (1982), Ms. Rowse would be allowed to increase the volume, intensity, or frequency of a nonconforming use. However, she is continuing with an allowed use of a two family dwelling in the ARR zone on a pre-existing non-conforming lot. Hence, the determination by the Board of Selectmen to grant the requested building permit should be upheld by this Board in its appellate capacity with regard to the administrative decision by the Board of Selectmen.

Respectfully Submitted,

Sandra Rowse
By and through her attorneys,

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Date:

7-2-2015



ZONING ORDINANCE

As Adopted March 11, 1958,

Including Subsequent Amendments

To and Including March 11, 1980

ARTICLE IV

Residential Districts

A building may be erected, altered or used, and a lot may be used or occupied, only for the following purposes and in accordance with the following provisions:

A. Uses Permitted

1. Single-family or two-family dwelling, except as otherwise provided in this ordinance.
2. Municipal buildings and public schools.
3. Residences may be used to house such customary uses by the owner or tenant as offices for doctor, engineer, architect, lawyer, real estate and insurance, or other recognized profession, excluding veterinarian; or such home occupations as hairdressing or dressmaking and other home occupations of a similar nature, excepting that the number of persons employed at any one location shall not number more than two persons in addition to the owner or tenant. No excessive traffic shall be generated by such home occupations. Parking shall be provided off-street.
4. Home food and home garden produce may be exposed for sale in this district.
5. Farm and garden activities are permitted when incidental to primary residential use, but any use injurious, obnoxious, or offensive to the neighborhood is prohibited.
6. Property owners or tenants with business, professional, or other service enterprises shall be allowed two advertising signs, relating only to the use or uses conducted in the building or on the immediate premises thereof; also two signs pertaining to the lease, sale, or use of a lot or building on which placed.

B. Lot Area Requirements

1. Within the Residential Districts R-1 and R-2 the lot area shall be not less than two acres and the frontage not less than 150 feet with population density of one family per acre except as specifically provided in this section.

2. Wherever required by reason of topography, subsoil or the need for adequate sewage area, the Planning Board may require a larger lot size in those places where town sewer is not available.
3. Within the Urban District R-1, wherever Town water and sewer are available and used, the lot shall be not less than 20,000 square feet, and the frontage and depth not less than 100 feet, and with population density of one family per 10,000 square feet.
4. Notwithstanding the above provisions, a lot having lakeshore frontage on a public body of water shall be not less than two acres with frontage on the lake of not less than 200 feet. The population density shall be one family per two acres.

C. Yard Requirements

1. There shall be a front yard on each lot which shall not be less than twenty-five (25) feet in depth from the front yard line, and a rear yard on each lot which shall be not less than fifteen (15) feet in depth from the rear yard line.
2. On each interior lot, side yards shall be provided in an aggregate minimum width of twenty-five (25) feet with a minimum of ten (10) feet for any one side yard.
3. On each corner lot there shall be a yard having a width of not less than twenty-five (25) feet abutting each street.
4. On any lot in any side yard not abutting a street, a detached private garage may be erected and maintained within the rear quarter of the lot if not closer to the side lot line than four (4) feet, or on any other portion of the lot provided that yard requirements applicable to the main structure are observed.
5. Any lot with less frontage and depth which is recorded and taxed as a lot of record before March 11, 1969 shall be deemed a conforming use.

ARTICLE V

Agricultural and Rural Residential District

A building may be erected, altered or used, and a lot may be used or occupied, only for the following purposes and in accordance with the following provisions:

A. Uses Permitted

1. Any use permitted in the residential District; as provided in Art. IV, A, except that lot areas shall be governed by Art. V, Sect. B, and yard requirements by Art. V, Sect. C.
2. All general farming, veterinarian, greenhouse, and forest activities, excluding sawmills, except by special approval of the Board of Adjustment, shall be permitted in this district.

B. Lot Area Requirements

1. No lot shall be less than two acres, and every building lot shall have a minimum lot frontage of 150 feet provided that where lots are located on the exterior of a curving street, a shorter front dimension shall be permitted provided the average width of the lot measured across its center shall be 150 feet.
2. The population density shall be one family per two acres.
3. Wherever required by reason of topography, subsoil or the need for adequate sewage area, the Planning Board, with the recommendation of the Health Officer, may require a larger lot size in those places where town sewer is not available.

C. Yard Requirements

No building or other structure shall be erected nearer to any side or back lot line than twenty-five (25) feet, nor nearer to any front line than fifty (50) feet.

D. Signs

1. Directional signs relating to a business operated in the Town of New London shall be permitted provided that said directional signs for any one enterprise do not exceed one in any two-mile length of road, not including those to indicate changes of direction; also, that said directional signs cannot be within fifty (50) feet of any other sign.
2. Property owners or tenants with business, professional, or other service enterprises shall be allowed two advertising signs, relating only to the use, or uses conducted in the building or on the immediate premise thereof; also two signs pertaining to the lease, sale or use of a lot or building on which placed.

6. Auto Service Station. Any area of land, including structures thereon, that is used or designed to be used for the supply of gasoline or oil or other fuel for the propulsion of motor vehicles and which may include facilities used or designed to be used for polishing, greasing, washing, spraying, dry cleaning or otherwise cleaning or servicing such motor vehicles. A service station is not a rental agency for autos, trucks or trailers.
7. Board shall mean the Planning Board of the Town of New London.
8. Building. Any structure for the shelter, support or enclosure of persons, animals, chattels or property of any kind.
9. Building Inspector shall mean the Board of Selectmen or that person whom the Board shall designate.
10. Drive-In Restaurant or Refreshment Stand. Any place or premises used for sale, dispensing or serving of food, refreshments, or beverages in automobiles, including those establishments where customers may serve themselves and may eat or drink the food, refreshments, or beverages on the premises.
11. Dwelling, Single-Family. A detached residential dwelling unit other than a mobile home, designed for and occupied by one family only.
12. Dwelling, Two-Family. A detached residential building containing two dwelling units, designed for occupancy by not more than two families.
13. Dwelling, Multi-Family. A residential building designed for or occupied by three or more families, with the number of families in residence not exceeding the number of dwelling units provided.
14. Dwelling Unit. One room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, rental or lease, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking and sleeping facilities.
15. Essential Services. The erection, construction, alteration or maintenance by public utilities or municipal or other governmental agencies of underground or overhead gas, electrical, steam or water transmission, or distribution systems, including poles, wires, mains, drains,

