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¹ Also admitted
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in Rhode Island

³ Also admitted
in Massachusetts

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in Maine and
Connecticut

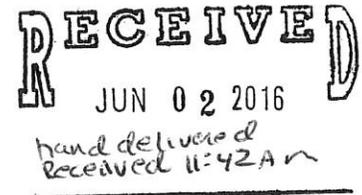
⁵ Also admitted
in New York

⁶ Also admitted
in Vermont

June 2, 2016

HAND DELIVERED

New London Zoning Board of Adjustment
c/o Amy Rankins, Land Use and Assessing Coordinator
375 Main Street, New London NH 03257



**RE: Application of Robert C. Stewart, Jr. / RCS Designs
600 Bunker Road, Tax Map 76 Lot 31**

Dear Ms. Rankins:

This office represents Regina and David Stevens (the "Stevens") who own property at 614 Bunker Road (Tax Map 76 Lot 30). An authorization designating me agent for the Stevens is enclosed herewith.

My clients object to the Application of Robert C. Stewart, Jr. / RCS Designs presented on behalf of the Paul A. and Linda C. Messer Irrevocable Trust (the "Application" or the "Applicant," as the context requires).

As the Applicant concedes, the placement of the existing structure on this .3 acre property is nonconforming. In particular, the structure currently violates the Front Yard setback and the northerly Side Yard setback. In fact, this is a substantial nonconformity; more than half the structure is currently located in the Front Yard setback as depicted on the Applicant's "ZBA Plan." This nonconformity is so pronounced that the proposed addition to the rear of the Applicant's structure very nearly encroaches on the front yard setback.

The proposal is to add a large master bedroom to the rear of the property closest my clients' property, within the Side Yard setback. Further, the proposal adds a new means of access to the property in the Side Yard adjacent my clients' property. This access point will encroach into the Front Yard setback.

Pleasant Lake is located a mere forty feet from the front of the existing structure. The premises are located in the Shore Land Overlay District.

An important part of the Board's inquiry must be whether, in addition to not offending the public interest in general, the proposed use "injure[s] the public rights of others." This requirement was analyzed in the *Chester Rod & Gun Club* case, 152 N.H. 557 (2005). Here, the Court noted that an applicant must prove "that the variance he seeks will not harm landowners in the vicinity[.]"

The Applicant has gone to "great lengths" to minimize the effect of the project on their northerly abutters. This is accomplished through the proposed lot line adjustment and the relocation of the existing entry platform. Unfortunately, that abutter's gain is my clients' loss. The proposal will redirect foot traffic away from the northerly abutters to the space between the Applicant's property and my clients'. If that area will be illuminated, it will negatively affect my clients. Noise is a concern. And, my clients' will lose what little privacy they have in that area. Every foot of encroachment in this area will create overcrowding of an already tight space.

Another major concern is the likelihood that a large area of ledge and trees will need to be excavated to make room for the proposed addition. This area is depicted in the photograph enclosed herewith. Presently, this natural feature offers privacy between the two lots and is an important element of the topography. Moreover, excavating this area will scar the landscape, look aesthetically unnatural, and jeopardize the fragile, natural drainage so important to the health of the Lake.

Further, while, in the aggregate, the building's nonconformities may be lessened under this proposal, that is not true vis à vis my clients. The proposal creates *more* of a nonconformity in this area. In this connection, the Ordinance does not sanction the Applicant's logic. If it did, Article V(C)(2) would contain only the "aggregate minimum width of 50 feet[.]" and not the next phrase, "with a minimum of 20 feet from any one Side Yard." Adopting the Applicant's reasoning would render this language meaningless.

The burden of proving an entitlement to a variance is on the Applicant. In this regard, the Applicant has not addressed important concerns that go to the permissibility of the proposal:

- (1) Why can the bedroom not be built straight back from the existing structure without the need for a variance? The Applicant does not address this question with any substance. Instead, the Applicant conflates this question with a discussion about bringing the whole building into conformity. My clients are not objecting to the existing nonconformities which are grandfathered. Thus, the analysis is not, as the Applicant suggests, whether it is possible to "raze the building and move it back into the 85% slope." The question instead is whether the *addition*, which is much smaller than the existing building, can be built there.
- (2) Why has the Applicant carefully mitigated the effect of the project on the northerly abutters and not my clients? Why have no mitigation elements been proposed as it relates to them?

- (3) Why is the three foot encroachment necessary? That is, why would a master bedroom three feet smaller work a hardship on the Applicant? *See Harborside Assocs. V. Parade Residence Hotel*, 162 N.H. 508 (2011) (variance permitted where proposed use was “least obtrusive” and tailored to surroundings).

Finally, my clients take issue with the Applicant’s analysis of the “unnecessary hardship” prong. On the “fair-and-substantial relationship” question, they point to language from Article XX(B)(2) of the Ordinance, stating, “Any Legal Nonconforming Building may be altered or expanded, provided, however, that such alteration or expansion does not make any existing Legal Nonconforming Building more a Nonconforming Building ...” The problem with this analysis is that the Applicant has not cited to the appropriate provision of the ordinance, thus skewing the analysis. The Applicant must, instead, consider the relationship between the “general public purposes of the ordinance provision and the specific application of that provision to the property.” RSA 674:33, I(b)(5)(A)(i). The Applicant is seeking a variance from Article V(C), not the language just quoted. Thus, the Applicant has failed to identify the lack of a fair and substantial relationship between the purposes underlying the Side and Front Yard setback provisions of the Ordinance and the specific application of that provision to this property.

In summary, my clients respectfully object to the Applicant’s proposal for the reasons stated and request that the same be denied. I am not available to attend tomorrow’s hearing due to my required attendance before another board. However, I ask that the Board consider my clients’ input, both as expressed in this letter, and as may be expressed by them in person.

Thank you for your assistance.

Yours Sincerely,

A handwritten signature in blue ink, appearing to read "Michael J. Malaguti". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael J. Malaguti

cc: Clients

June 1, 2016

Zoning Board of Adjustment
375 Main Street
New London, NH 03257

RE: Application of Robert C. Stewart, Jr. / RCS Designs
600 Bunker Road, New London

To Whom It May Concern:

This will authorize Michael J. Malaguti, Esq., to represent us before this Board for purposes of the above application and any continued hearings or rehearings thereon.

Dated: 6-1-16

By: 
Regina Stevens

Dated: 6/1/2016

By: 
David Stevens

