# TOWN OF NEW LONDON, NEW HAMPSHIRE

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**ZONING BOARD OF ADJUSTMENT**
**MEETING MINUTES**
**Thursday, July 2, 2015**
**6:30 PM**

**MEMBERS PRESENT**: William Green (Chair); Doug Lyon (Vice Chair) Ann Bedard; W. Michael Todd; Katharine Fischer (Alternate)

**MEMBERS ABSENT:** Cheryl Devoe, Paul Vance (Alternate), Frank Anzalone (Alternate), Courtland Cross (Alternate) and Vahan Sarkisian (Alternate).

**STAFF**: Lucy St. John (Planning and Zoning Administrator), Chris Work (Recording Secretary) and Jay Lyon, Fire Chief.

**Others in Attendance**: Abutters in attendance that commented: Steve and Philomena Landrigan (appealing the building permit), Sandra Rowse, David Guion and Gary Surprenant. Mary Beth Angeli, real estate professional and Attorney Susan Hankin- Birke, attorney for Sandra Rowse.

**Call to Order:** Chair Green called the meeting to order at 6:30 PM. He called the roll and asked Katharine Fischer to sit in for Cheryl Devoe.

**Review of Minutes:** No action was taken on the March 11, 2015 minutes.

**Public Hearing(s):**

**Appeal of Administrative Decision for the building permit approved by the Board of Selectman on May 14, 2015.** Sandra Rowse property located at 18 Sutton Road, Tax Map 122-002-000. Appeal application received from Steven & Philomena Landrigan, who own property at 22 Milkhouse Road, an abutter to the Sandra Rowse property. The Rowse property is zoned ARR. Refer to the application submitted for the complete details.

Ms. St. John distributed to the Board, the Landrigans and Jay Lyon, Fire Chief a copy the memorandum submitted before the meeting by Attorney Susan Hankin- Birke, the attorney presenting Sandra Rowse. Ms. St. John also commented that a staff report was not prepared and the Board may want to refer her email of July 1 which outlines various provisions of the Zoning Ordinance.

Chair Green summarized that the purpose of the hearing tonight is to consider an appeal by the Landrigans of the May 14, 2015 decision made by the Board of Selectmen to approve a building permit for Sandra Rowse to make improvements to the two residential units on her property. Chair Green then turned the meeting over to the Steve Landrigan and asked him to begin their presentation. He instructed them to go completely through their objections to the project and if the board has any questions, members will ask them. Mr. Landrigan commented he wasn't sure of the procedure. Mr. Green explained that an affirmative vote of three (3) members is needed.

Michael Todd noted that Mr. Landrigan simply has to make a presentation followed by Ms. Rowse's rebuttal. Chair Green replied that this is not a debate between the Landrigans and Ms. Rowse, the Landrigan's are challenging the Selectmen's decision. Michael Todd commented that as long as the board hears from everyone, members will listen to the facts and make a decision.

Mr. Landrigan referred to the printed information he had submitted earlier, saying that this was an appeal of a decision made by the Board of Selectman. Chair Green stated that this was not a contest and that the Landrigans are challenging the Selectmen's decision. The ZBA is here to decide whether the Selectmen made an appropriate decision.

Mr. Landrigan responded that when the potential buyer of Ms. Rowse's property was asked if he would like "this" next to his house, the gentleman declined to answer.

Mr. Landrigan asked Ms. St. John to display on the screen Ms. Rowse's building permit for the audience. He pointed out that the improvements Ms. Rowse proposed to make were not just moving a few bedrooms around. The plans call for converting the garage to bedroom space, among many other renovations, such as a new second floor, and as far as Mr. Landrigan can determine, it is not permitted according to what's in her file. He said that Ms. Rowse is making a significant change to the structure. Mr. Landrigan noted that he and his wife have stated why they believe the Selectmen made an error – 18 Sutton Road is a single family dwelling according to the tax card. There are two MLS Agreements, one from 2007 and one from 2014, both of which categorize the house as a residence and not a two-family. The owners signed those MLS Agreements. The single family dwelling had an in-law apartment which does not fall into zoning regulations and in-law apartment is not specifically defined in the ordinance. It is a unit dwelling and might be considered as such, but that does not make the house a two-family dwelling. It was only one room as far as Mr. Landrigan knows, with a kitchen put in it. He noted that in 2010, Peter Stanley wrote a letter to the owner at the time and asked that the second kitchen be removed, which was done at some point after the request was made. The Landrigans looked for a building permit approving the removal of the kitchen, but could not find one in the property file. So far as the Landrigans know, there was never a permit. This property only has two and a half acres, and the town over the years has moved in the direction of lower density.

Mr. Landrigan declared that Ms. Rowse is expanding a non-conforming use and it is well beyond what the town wants regarding density. He noted that expanding a non-conforming use is not something the town considers desirable, especially when it is out of character for the village. He thinks the Selectmen made an error, and he does not know if it was due to lack of information, or they had wrong information, but there has been discontinued use of that property since about 2010, based on a letter that Ms. Rowse wrote herself. He stated this building is not a two-family dwelling and should not be made into a dormitory.

Chair Green asked Ms. St. John to give the board some background. Ms. St. John referred to the building permit application submitted, and noted that per Article VI, ARR District, that a single-family or two-family dwelling is a permitted use. She referred to Peter Stanley's letter of 2010, which discusses a third dwelling unit and other details as noted in that letter. This property is a non-conforming two family dwelling unit, and a two-family dwelling unit is a permitted use in the ARR district.

Mr. Landrigan disagreed, saying that Peter Stanley's letter of December 29, 2010 referred to it as two-dwelling units, not a two-family house. There was an in-law apartment only. In addition, maintained Mr. Landrigan, the acreage was subdivided a few years ago by Ms. Rowse and she only has two and a half acres now. He noted that the current ARR zoning requires four acres per family.

**Public Hearing Opened:**

Philomena Landrigan, applicant commented that they were told this is an in-law apartment, but there isn't a definition in the zoning ordinance for an in-law apartment. She noted that the tax card refers to it as a single- family, and that this is not a permitted use in the ARR district. She also said that Sandra Rowse property had more acreage with it in the past, maybe 10-13 acres.

Gary Surprenant, an abutter, commented that the expansion of a non-conforming building bothers him. He commented he is an abutter to the Flying Goose restaurant site, and he went through this issue of a nonconforming use with the Flying Goose property. He said this is a slippery slope, and asked what is next. He is concerned with the expansion of something that is a nonconforming. He wonders what will come next – maybe a commercial building.

Mary Beth Angeli, a New London resident and realtor, said she became familiar with the property in 1985. It was a two-family at that time. Since then, she has sold the house twice and each time it has been considered a two-family home – always. She noted that in real estate, they do not list residences as two-family – just residential, commercial and condo.

Mr. Todd asked to hear more about that. Ms. Angeli explained that a property could be listed as anything. An apartment could be listed as commercial. Chair Green noted that how the property was listed in MLS has no relevance to the discussion tonight.

Steve Landrigan replied that per the property tax card it is clear it is a single family house, and that it is not a commercial rental property.

Mr. Todd said he still wanted to hear more MLS information.

Philomena Landrigan stated that the property has always been listed as a single family with an in-law apartment, never as a two-family.

Mr. Todd said he still wanted to hear more MLS information, even if the administrative officer did not.

Mary Beth Angeli responded that she was familiar with the home and it has been listed many ways over the years, as an in-law apartment, as a two-family.

Susan Hankin-Birke, attorney for Sandra Rowse, said she would like to first address the issue of what the tax card says. She feels the written documentation seems to be a little bit misleading. The 2014 and 2015 tax cards say that the property – Under “Notes” – is a post and beam residence. The tax card refers to two in-law type set-ups. It also categorizes this property as “mixed use,” so the fact that it is listed that way and described as a single-family home does not make sense. Ms. Hankin-Birke said she was not sure the tax card alone should be the binding item. When she looked at the listing agreement, she found it pretty consistent with the tax card.

Ms. Hankin-Birke noted that the history of this property is significant. In her research she learned that building dates back to the 1740’s. It has been used as a tavern and an inn. She also noted that the Gray House (now the Flying Goose) has been there since 1932, so when we are talking about this general area it used to be a commercial setting. Attorney Hankin-Birke noted that in the early 1900’s, there was a dairy farm on the property and workers were housed in the structure. She commented that the house has many bedrooms and bathrooms. She noted that you don’t see a lot of building permits in the file for the various uses over the year. The reason is that zoning was adopted in 1958 and many of these uses were established before that time frame. She reiterated that this is the old Crockett Farm, which has lots of history, including housing farmer workers over the years. The history of this property is clearly that it has been used in a variety of ways.

Attorney Hankin-Birke stated that the significance of the Pellerin (aka Pelfor Corp, as referred to in Peter Stanley’s Dec 29, 2010 letter) family ownership is that an annexation plan was done in June of 1980 and approved by the New London Planning Board. She noted that the deed refers to three (3) parcels A, B. and C. She noted that the deed refers to 10.93 acres and other acres. The plan shows that what the Pellerins owned was the entire structure on Parcel A, and Pelfor combined with the lot where the house is

a Parcel B and well as a Parcel C, which is where the barn is located. The Landrigans are not correct that Ms. Rowse conveyed away part of the property on which this house sits. Lot 1 was conveyed away and that piece was sold off. She told board members to look at Ms. Rowse's deed, it describes two parcels, one with A, B, and C, and the second lot is a 10.93 acre parcel. Attorney Hankin-Birke referred to the tax map and explained where the house and other structures on the lot are located. She also commented that if neighbors are concerned about speed limits along the road, they should contact the Police Department, as speed issues pertain to all motorists.

Attorney Hankin-Birke commented to look at a survey done in 1980, which reconfigures the land the house is sitting on, shows a winding structure, almost a "U" shape, so it is obvious there were substantial additions onto this property before 1958. She thinks the building was in its current state when zoning came in. She also agrees that with the zoning ordinances in place in 1980, there is no category within these ordinances for an in-law apartment. What is there now, and in 1980, is a definition for a two-family dwelling, and they are not free-standing, they share walls and roofs, and this is what one sees in the configuration of the property Ms. Rowse bought. New categories cannot be created at this point. In this property's history, what was there was clearly mixed use of the property including tenants and workers.

Attorney Hankin-Birke commented that when Ms. Rowse bought the property in 2008, the letter from Peter Stanley indicated concern about the fact there were three kitchens. It seems the counting of the kitchens was a factor in determining whether it was a single-family or a two-family building. Atty. Hankin-Birke noted that Ms. Rowse wanted to come into compliance with what the town expected, and so she removed a kitchen as requested. Ms. Hankin-Birke said Mr. Landrigan alleges there had been an abandonment of this property as a two-family dwelling, and so she checked the law to see what constitutes abandonment. She commented that abandonment is a two-prong test and the test is not met here. Mr. Landrigan would have to show Ms. Rowse's intention to relinquish the second dwelling with an overt act or failure to act that owner retains any interest in the use. Ms. Rowse was trying to oblige Mr. Stanley. Attorney Hankin-Birke maintained that the fact there are separate living quarters which have been used by other people, not just family members, makes it pretty clear that the house has been treated as a two-family for some time.

Ms. Hankin-Birke pointed out that one of the comments made in the material submitted by the Landrigans is in part annotations to an article regarding uses, and what they say, in effect, is that because of the "change" by conveying away the property, there was a loss to Ms. Rowse as to what was conveyed to her. Ms. Hankin-Birke noted that Mr. Landrigan included a page from the NH Municipal Association on grandfathering and midway down the page the comment here is the use of the in-law apartment was a permitted use prior to the subdivision. Attorney Hankin-Birke commented that a residential use is permitted in an ARR zone, both one-family (single-family) and two-family dwellings are permitted in this zoning district. Ms. Hankin-Birke stated it appears to her that given the length of time that this property has existed, and the many ways it had been used, when zoning came in in 1958, it certainly had been more than a single family residence. Workers who lived there were tenants of the property. She noted this is not a change in use, the use has been residential for many years. She also noted that the Town does not and cannot dictate if a property is rented or owner occupied. Ms. Rowse is not saying that use should be changed. There is nothing in the ordinance that limits how it is to be used, whether it is owner-occupied or rented to others. She noted that Sandra Rowse the owner has only for some time used a section of the house as her unit. Attorney Hankin-Birke commented that she thinks some of the confusion is that the house looks like a single-family dwelling, when in actuality it is a two-family, and has been used as such for many years. She noted this is not a change of a residential use.

Ms. Hankin-Birke stated that Ms. Rowse was in contact with town administrators and invited Peter Stanley, at that time to see what the house looked like after the renovations were done. Bringing the house into compliance meant keeping it a two-family, which is why Mr. Stanley wanted the third kitchen

removed. Ms. Hankin-Birke noted that she has visited the property to make sure there were separate entrances to these two living spaces, and she is certain they are two completely separate dwelling units. She also pointed out that the removal of the office space was considered by the town as a third dwelling unit.

Ms. Rowse had a tenant in the building at the time she received the letter from Mr. Stanley, and he gave her another six months in order to let the tenant move out before the kitchen was removed. Ms. Rowse decided that would be the better space for the apartment than where the second kitchen was located.

Mr. Landrigan accused Ms. Rowse of converting the illegal third apartment to the second apartment and abandoning the other. Mr. Todd asked how many kitchens were there now and the answer was two. The kitchen came out of the Southwest corner of the building where Peter Stanley referred to it. Attorney Hankin-Birke noted that the file does not include any other notices of violation.

Michael Todd asked if Ms. Hankin-Birke had the citation for the definition of "abandonment" and Ms. Hankin-Birke referred to her memorandum, citing Lawlor v. Salem 116 N.H. 61 (1976) and Hampton v. Brust, 122 N. H. 463 (1982).

Attorney Hankin-Birke maintained that because Sandra Rowse is continuing with an allowed use of a two-family dwelling on a pre-existing non-conforming lot, she has a right to expand as long as it does not have a negative effect on the neighborhood. The property has an exit on Rt. 114 and also an entrance on Milkhouse Road, so there are two ways of accessing the property. Ms. Rowse's house cannot even be seen from the Landrigan residence. She read the current definition of dwelling unit, definition # 43.

Doug Lyon stated that Peter Stanley' letter clearly suggests that this is two (2) dwelling units. He stated he wanted to address the issues of expansion of a non-conforming use. He is not familiar with the nuances of the building permit that was approved. Susan Hankin-Birke said no additional floors have been added; the plan is to more evenly distribute the bedrooms that are there. Mr. Lyon asked if there was expansion of the square footage, Attorney Hankin-Birke said no. Mr. Lyon said his understanding is that one cannot expand either the footprint or the square footage. So, he asked, if the garage was always a garage, how is its conversion to a bedroom not an expansion? Susan Hankin-Birke answered that there are more bedrooms than are being used in one of the portions of the house. She noted that many of the bedrooms cannot be used because families are not that big anymore. The idea is to reconfigure the space. Mr. Lyon noted that this would have to be done within the existing square footage. The garage was not used as a bedroom in the past. Ms. Hankin-Birke replied that it is a conforming use within the zoning ordinance. Mr. Lyon responded that a garage is not a dwelling unit and does not usually have bedrooms, and this one never did, so it is being expanded as a non-conforming use.

Jay Lyon, Fire Chief, noted that there is a living space above the portion of the garage in an attic space that would be converted to two bedrooms. Michael Todd opined that if the board accepts the concept the entire structure has always been a two-family, it is Ms. Rowse's assertion that it doesn't matter how she carves it up. He says it looks as if she wants five bedrooms in each half after the hallway line is moved.

Doug Lyon said the town is arguing that Peter Stanley's letter indicated the property has housed two dwelling units, and the letter implies that Mr. Stanley objected to the office as a third dwelling unit. Mr. Lyon said he does not have a problem substituting and moving the unit, and he does not have any problem with reconfiguring the existing square footage because it does not expand the footprint. However, he believes there is a conversion of space that was never part of a living unit into a living unit. Mr. Lyon considers that an expansion. The non-conforming use as it sits now does not meet current zoning regulations. What is not permissible is the expansion into the garage and the attic space in it.

Mr. Landrigan referred to the diagram and pointed out the second floor over the existing office. Sandra Rowse interrupted, indicating that what Mr. Landrigan was pointing to is the stairway up to the master bedroom. Mary Beth Angeli noted there was a small attic with walk-in space.

With regard to the issue of abandonment, Mr. Landrigan said he knew the kitchen in the original apartment was torn apart, then another kitchen put in, and yet there was a letter that referred to the kitchen in the office, and Ms. Rowse said that would be taken out. He maintains there is no permit for the new apartment, so that constitutes abandonment. He also considers this an elaborate expansion of the use of that property.

Mr. Landrigan cited some codes regarding non-conforming use. Philomena Landrigan stated that she does not believe this expansion meets the criteria of being in character with the neighborhood. She said the property has never been used as a two-family. The Pellerins lived there and it was a single-family house with an in-law apartment. She maintained that the tax card says it is a single-family dwelling.

Gary Surprenant, an abutter, commented that in his experience, when something is non-conforming, it can still be legal. Once the use is changed, however, it has to be brought into conformity.

Katharine Fischer asked Attorney Hankin-Birke how many bedrooms were in Dwelling A and in Dwelling B before the current plans were made. The answer was one (1) and nine (9), for a total of ten (10) bedrooms.

David Guion, an abutter commented that since all these college students have been housed in this particular residence, there are constant parties, foul language and noise. The property is being used as a boarding house. There is no supervision in there. He stated that the residence is not helping or enhancing the value of their property.

Chair Green said he appreciated everyone’s comments about the neighborhood.

Mr. Landrigan once again repeated that the tax card says the property is a one-family. Chair Green noted the assessor says it is not unusual to show a two-family as a single residence.

Lucy St. John clarified that a “family” is typically defined as type of social unit. A dwelling is a structural unit which can be of various sized. For example a small house 800 square feet, or a large house 10,000 square feet. Houses and dwelling units are all different sizes. A social unit and a structural unit are two distinct things. She noted that it is not uncommon for someone to convert an existing garage or unfinished basement, or other area of a house into other living space for bedrooms, playroom or some other use. She explained that just because a house has five bedrooms or one, the town cannot tell a family with children how many children can be in that bedroom.

Chair Green commented that he contacted the Assessing Department to learn more about how information is categorized on the tax property cards. He said that it is not usual to show number of bedrooms or if something is a two-family. He stated that he did not want to try to speak assessor’s lingo, but if one looks at the history of this property, he is making a guess that it was mixed use. There was a farm, there was a dairy, and there was an office and single residence at the same time when Pelfor was there.

Ms. St. John clarified that in general zoning terminology a mixed use is for example a site that has commercial on the first floor and residential on the second floor, or a variety of commercial uses in a buildings. Mixed use does not generally mean a two-family dwelling unit. She referred to current definition of mixed use, #93 which defines a mixed use – the development of two or more uses permitted with the Zone District in the same building or on the same property.

Fire Chief Jay Lyon said that with respect to fire codes, Chapter 26 of the Life Safety Code would define this building as a lodging and rooming house, which does not qualify as a one or two family dwelling. If there are typically more than three non-related individuals living at the house, it should be considered as a lodging house. He noted that Ms. Rowse had been in contact with the Fire Department to meet minimum fire code compliance and the Fire Department was caught off guard about the utilization of this property.

Attorney Hankin-Birke stated that Ms. Rowse had made a substantial investment in a new septic system and improvements to the property to enhance fire safety requirements.

**Public Hearing Closed.**

> **MOTION WAS MADE (Michael Todd) AND SECONDED (Doug Lyon) TO DISCUSS. THE MOTION PASSED UNANIMOUSLY.**

**Board Discussion Opened.**

Michael Todd inquired as to why the information submitted by the Landrigan, included a hand written note at the bottom of the building permit copy, which state, "No plans filed very nondescript."

Ms. St. John that when she met with the Landrigans and they asked to see the files, she specifically instructed them to review the property account file and to review the actual building permit materials that Sandra Rowse submitted.

Katharine Fischer directed board members to Article II, General Provisions # 18 Accessory Dwelling Units, on pages 17 and 18 in the Zoning Ordinance. She proposes that what the board has here is not a two-family and is instead a one-family with an accessory dwelling because there is a bigger unit and a smaller accessory unit. Requirements and limitations are listed for an accessory dwelling. Chair Green asked Ms. Fischer if she was differentiating this because an accessory dwelling is too small to be considered a unit, and Ms. Fischer replied that was part of it. She feels this property has all the indicia of a single family home and accessory dwelling.

Ann Bedard asked if this is an accessory dwelling unit or a two-family dwelling unit, and is an accessory dwelling unit considered a dwelling unit, if so, this could still be considered a two-dwelling unit. She noted the footprint of the building is not changing, and this has been allowed for other units in town. However, she feels changing the interior layout will change the building's use.

Chair Green commented that in reading the information and going back to the floor plan that the Grafs presented of the property, they had a floor plan and in it was an in-law apartment. Their application for the permit they were requesting was prior to 1999 when the density requirement was two acres. Mr. Green said he was not sure when the apartment went in, but it was prior to that, so it was conforming. He feels the only issue relates to expanding the property. He said, given that, dividing the space up within the existing structure is permissible, but he does think there might be an issue about expanding the space and making it larger.

Katharine Fischer opined that if anything has two units, it is considered a two-family dwelling. She reviewed the provisions of Article II, # 18, Accessory Dwelling units, referring to the size criteria and the intent not to change the character of the area.

Lucy St. John stated that the Planning Board has been discussing provisions in the ordinance regarding accessory dwelling units, and recognizing that that the ordinance needs some clarification.

Doug Lyon reflected that at the time Peter Stanley wrote his letter to Sandra Rowse, the town viewed the property as having two dwelling units. He did not get into the definition of accessory use, and the letter suggests that the property had two dwelling units at least back to 1986. Mr. Lyon said he was not sure when the accessory unit definition went on the books, but it was probably after 1986. Doug Lyon commented that there was no question that the whole issue of mother-in-law apartments has been a can of worms in this town for a long time, and the situation has not improved. He noted that mother-in-law apartments end up being rental units. Doug Lyon said he considered the reconfiguration within the existing footprint and square footage, but not the expanded square footage in the garage, which was not formerly part of the residence.

Michael Todd asserted that if the board allows this expansion, there will be exterior modifications when the garage is changed into a living unit. Ms. Rowse is going to put bedrooms where she used to park cars. So the garage doors are going to be replaced with walls and windows. Attorney Susan Hankin-Burke replied that she is not sure when that section was made into a garage. Clearly this was not dwelling space. Attorney Hankin-Birke also noted that the Selectmen approved the plan. Mr. Todd replied that if the board considers this to be an accessory dwelling unit, there cannot be a change to the exterior. Doug Lyon cautioned again introducing the words "accessory dwelling unit," because it will open a huge can of worms. Ann Bedard commented that she does not think it is the board's job to re-define that space.

Lucy St. John asked how the town has historically tracked accessory units and who was living in them, if the intent for the accessory dwelling unit, is for "in-law" as the board has stated. She noted that Towns' do not keep track of when someone is renting to a "relative", or some other unrelated persons. Bill Green simply said "horribly."

Doug Lyon repeated the town has considered the Rowse property to include two dwelling units and he thinks it is unfair to re-establish that at this late date. The use of that property goes back a hundred years and there were multiple unrelated people in it. Michael Todd wondered if that raises another issue about the owner living in the building. Chair Green asked, did the Selectmen err or has the applicant demonstrated there was an error in the granting of the building permit that was given? Michael Todd felt that if the board finds there was, that is good enough, as an error as to part or all of the building permit is enough to deny it.

Chair Green asked the board if they viewed this home as a two-family dwelling. All board members answered in the affirmative. Mr. Green asked if there was some other part of the approval that the board had an issue with. Doug Lyon replied the plan that was submitted incorporating additional living space looks like an expansion of a non-conforming use. The definition of "non-conforming" was briefly debated. The Board then referred to various definitions in the Ordinance regarding the term "nonconforming" including definitions # 77-Legal Nonconforming Building or Structure, #78-Legal Nonconforming Lot, # 79 Legal Nonconforming Use , # 102 Nonconforming Building or Structure and #103 Nonconforming Use.

Ms. St. John referred the Board to the provisions of Article XX, Nonconforming, pages 82-83 of the Zoning Ordinance, B (2), which states any legal nonconforming building or structure may be continued indefinitely and may be altered, expanded, restored, reconstructed an/or replaced subject to the following limitations, specifically (2). Lucy St. John questioned why, if all board members just agreed it is a two-dwelling unit, and the owner is proposing to expand in the existing footprint, and is essentially altering the interior space, does this comply with the provisions. One board member claimed that what makes it non-conforming is the change in density and Michael Todd agreed. Doug Lyon thinks the increase in square footage is the deciding factor. Ann Bedard wondered if the Ms. Rowse came back with the same garage space and shifted things, would that make it more conforming? Doug Lyon asked what the square footage is now for each unit, and what the square footage would be for each unit, if the diagram and

alteration included on the building permit are implemented. Ann Bedard asked again if Ms. Rouse leaves a garage space somewhere in that footprint, is that bringing the building more into conformity. The answer was maybe. Doug Lyon commented that if there is a car parked in it, it's not a residential space. Lucy St. John noted that it is typical for many homes to have garage space, and often people convert an existing garage space to other residential living space such as bedrooms, living area, kid's playroom, den, etc.

Chair Green asked if the board thought there was no limit on its expansion. St. John commented that the building permit does not include an expansion of the footprint, but rather is an alteration of the existing interior space, within the existing footprint. It was noted that the abutters have expressed concern about the intensity of the use of the property, but the actual use of the property is still residential. It was asked if the intent of the use may be changing, or is the use actually changing? Staff referred the Board to the provisions of Article XX, pages 82-83.

Chair Green asked everyone to turn to page 82, Article XX, B. (2) of Zoning Ordinance. Doug Lyon stated that based on this provisions, the house can be expanded and expanded upward. Clearly, the point is that expanding it upwards would increase square footage. He concluded that what is now being requested by the applicant is within the definition of this document. Lucy St. John agreed.

Doug Lyon commented that notwithstanding the issues that Katharine Fischer raised, which are real and which just adds to the whole confusion, he thinks reading this language on page 82, Article XX, B. 2. clearly does not preclude the expansion of the square footage.

**Discussion ended.**

**MOTION WAS MADE (Doug Lyon) AND SECONDED (Bill Green). The ZBA affirms the decision of the Board of Selectmen that the building permit issued was proper and is in compliance with the Zoning Ordinance for the following reasons:**

1. **The structure is a preexisting two-family dwelling which is a permitted use in the ARR district.**
2. **The structure is a legal nonconforming building which can be altered and expanded according to Article XX, B2.**
3. **The lot is an existing legal nonconforming lot of record.**

**MOTION PASSED UNANIMOUSLY.**

Mr. Landrigan indicated he intended to appeal the board's decision and asked what the procedure entailed. Ms. St. John replied that he should refer to the provisions of RSA 677 Rehearing and Appeal Procedures, specifically 677:2 and other provisions which may apply. She noted this is not legal advice and he was advised to seek legal counsel as he deemed appropriate. Attorney Susan Hankin-Burke also reiterated the RSA provisions. Ms. St. John noted that a Notice of Decision would be posted and minutes would available for meeting.

Philomena Landrigan then commented that they are not eager to have the college students at this location.

**Other Business:**

Zoning Amendment Process Update- Ms. St. John noted that the Planning Board is and will be discussing zoning amendment ideas for consideration and if the ZBA has any provisions or issues they would like the Planning Board to consider to let her know. She noted that amending a provisions is not a simple task, as often there are other sections of an ordinance that may need to be amended as well.

Doug Lyon referred to the nonconforming provisions of Article XX and that this might be something to review. There was brief, spirited informal discussion about the definitions of conforming and non-conforming. Doug Lyon thought the town was saying if it doesn't affect the setback or shoreline, it doesn't care. Ann Bedard observed that the town's zoning has changed so dramatically that a lot of residences are now non-conforming.

Discussion on Boundary Survey Plans- Ann Bedard suggested it would be a good idea to have someone from the ZBA meet with the Selectmen to suggest requiring some formal boundary line surveys for lakefront property. The Board agreed that Ann Bedard would prepare a brief recommendation on behalf of the ZBA and present this idea to the Board of Selectmen, to require a boundary line survey in some instances.

> **MOTION WAS MADE (Bill Green) AND SECONDED (Katharine Fischer) to appoint Ann Bedard as the ZBA's representative to meet with Board of Selectmen to discuss the requirement of surveys for lakefront property. MOTION PASSED UNANIMOUSLY.**

**Motion to Adjourn**

Motion to Adjourn was made by Bill Green and seconded by Ann Bedard. Meeting adjourned at 8:46 PM.

Respectfully submitted,

Chris Work
Recording Secretary