

**Town of Milford  
Zoning Board of Adjustment Minutes  
January 17, 2013  
Reginald Walker  
Variance**

Present: Fletcher Seagroves, Vice Chair  
Zach Tripp  
Bob Pichette  
Len Harten

Absent: Kevin Johnson  
Laura Horning

Secretary: Peg Ouellette

The applicant, Reginald Walker, owner of 75 Union Street, Map 29, Lot 65 in the Residence "A" district, is requesting a Variance from Article V, Section 5.02.1 for the conversion of a two-family legal non-conforming structure into a three-family structure.

Motion to Approve: March 7, 2013

Fletcher Seagroves, Vice Chairman, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. He informed all of the procedures of the Board. He stated that there was one case under old business. This case was postponed from the January 3, 2013 meeting. The applicant, Reginald Walker, and Brenda Walker were present. No abutters were present.

F. Seagroves informed the applicant that there were only four Board members present and the applicant had the right to be heard by a full five-member Board. He reminded the applicant of the option to proceed with the hearing before four Board members or to request a postponement. The applicant elected to sign a waiver stating he waived the right to a five-member Board.

The list of abutters was read into the record. There were no abutters present. Reginald and Brenda Walker were present.

F. Seagroves read the notice of hearing into the record and then invited the applicant forward to present his case.

R. Walker stated that they were requesting a variance to convert a two-family structure into a three-family structure. They have installed wrap and insulation for energy efficiency with vapor barrier, and put vinyl siding on the building with oversize corner molding. In order to keep the character of the building they are keeping a couple of the wood corbels and details. They are replacing all windows in the farmhouse with low-E six-pane windows. All bedrooms, on advice of Bill McKinney, building inspector, will have casement windows to give full egress. In the interior they are repairing existing wiring, open circuit grounds, hardwiring smoke and CO2 detectors throughout the building, repairing walls, repainting the entire interior and sanding and refinishing the wide pine floors, renovating the second-floor bathroom and, with approval, will renovate the second-floor kitchen. They plan to have two dedicated egresses for each apartment—two exterior doors for each, for building and fire safety. He went through the history of the building. In the 1940's it was no longer being used as a farmhouse and was turned into two units. The kitchen in the upstairs dates to around the 1940's or early 1950's. In the late 1980's the former owner applied to renovate the barn to turn it into an apartment. At that time the former owner was given the choice of applying for a third unit or take the kitchen out. There were several letters back and forth between the building inspector and the former owners. The former owner sent a letter to the building inspector at the time stating he was removing the kitchen upstairs. Apparently, there was no follow-up from the building inspector. When Mr. Walker went into the farmhouse and barn there was still a kitchen in the upstairs apartment. He is asking permission to make it a legal apartment. He provided a list of area properties showing multiple three and four units in the same general area, so it is not out of character of the neighborhood. Upon purchasing the property, he was approached by some neighbors with stories about what had gone on there previously – the building was rundown and no one was keeping track of the tenants. Without turning it into three units, they would end up with a barn that has three bedrooms and a farmhouse with five or six bedrooms, which would be difficult to rent. It is not conducive to that neighborhood. The intent is to do the renovations. He referred to pictures showing the building before and after the renovations they have done with the windows and siding. He stated that at this point the exterior renovations will have to wait until spring and they are at a standstill and need to make a decision on how they can proceed with the rest of the building, whether they have a two-unit or three-unit.

B. Pichette asked if the barn is #77, and whether they plan to renovate the outside of #77 and #75.

R. Walker responded yes it is, and they do plan to do the whole thing, including the garage. It will all be vinyl-sided.

B. Walker showed pictures showing the back and the siding they are doing. They are trying to keep the character of the woodwork on the side of the doors.

R. Walker said it is detailed woodwork they want to preserve. They don't want to turn it into a big box. They want to upgrade the appearance and clean up the inside.

Z. Tripp asked if the history in the application was something the applicant put together.

R. Walker said he did some of it and had his lower look into the history. Some of it is from talking to Bill McKinney, who had come to his shop. He told Mr. McKinney he had bought the property and said the town had it listed as a two-unit but it has three units. Bill McKinney said he knew it had three units. Mr. McKinney came over to look at it when Mr. Walker pulled the building permits and suggested the windows for full egress, electrical repairs, etc. that needed to be addressed. A week later, Mr. McKinney called and said he had found letters in the folder on the property and there was an issue with the third apartment.

Z. Tripp asked if, when Mr. McKinney did the code review, if he did it as if it were three units.

R. Walker said Mr. McKinney was fully of the opinion that it was three units, as he had been there for some issues over the last year, and had told Mr. Walker he knew it was three units and thought it was mis-categorized by the Town; and that is when he looked into the folder and found the letters and realized it was an issue.

Z. Tripp asked if there were any code enforcement concerns operating it.

R. Walker said there were not.

Z. Tripp asked if the property was vacant when Mr. Walker purchased it.

R. Walker responded it was.

Z. Tripp asked it, when he viewed the property and put in the application it looked clearly like three units.

R. Walker said there were three existing kitchens, three furnaces, three electrical meters, three water heaters.

Z. Tripp said he assumes the three furnaces, kitchens, meters, were evenly divided among three units? Not two water heaters for one unit, or something crazy.

R. Walker said no. They are evenly divided.

Z. Tripp asked how many parking spaces would be available per bedroom if this is approved. The barn is a three-bedroom? And the current apartment down is a two-bedroom?

R. Walker said there are two down and three up.

B. Walker said there is probably parking for 12 cars, and there is a garage.

R. Walker said there would be no problem with off-street parking

Z. Tripp said it would be off-street parking.

R. Walker said there would be no problem with people parking on the street.

Z. Tripp said with eight bedroom total, with how many spaces?

B. Walker said probably 15, if needed.

F. Seagroves went over a brief history for the benefit of the viewing audience. It appears that about twenty years ago the then owner was putting in a third apartment and the building inspector said the owner had to get a variance, which was never done. It appears he had done the kitchen and because he didn't get a variance, he was didn't take out whatever it was.

R. Walker said the former owner was supposed to take out the electrical.

F. Seagroves said someone going in who didn't know what was removed or needed for a third kitchen would just assume there was a third kitchen there. The applicant is requesting a variance from Article V, Section 5.02.1, Acceptable Uses for Residential A. The accepted uses are: single-family dwelling and accessory uses and structures; telecommunications facility, and farm roadside stand. As the applicant stated, there are a lot of apartments along that street.

Z. Tripp stated that Residence A came in 1995, so from the brief history..

F. Seagroves said it was a grandfathered property.

Z. Tripp continued that if there was an apartment in 1993 it was before the Residence A district.  
F. Seagroves said they were looking for a variance for the third apartment.  
Z. Tripp said technically it doesn't allow a two-family. If it is considered a legal con-conforming two family you are asking for a variance for a third  
F. Seagroves said he assumed that was what he was assuming.  
F. Seagroves then opened the meeting for public comment. There was none. He closed the public comment portion of the meeting and asked the applicant to read from the application the criteria for a variance.

B. Walker read the application:

**1. Granting the variance would not be contrary to the public interest because:**

The conversion of the existing dwelling structure to allow a third apartment will not be contrary to the public interest because the neighborhood currently consists of a mix of single and multi-family dwellings. There will be no noticeable impact on public health, safety and welfare, except for the positive benefits gained from property improvements.

**2. If the variance were granted, the spirit of the ordinance would be observed because:**

Although the residence "A" district is primarily a single-family district, the neighborhood was developed prior to the zoning with multi-family dwellings. The proposed additional apartment will not conflict with the spirit of the ordinance because the use will remain low-intensity.

**3. Granting the variance would do substantial justice because:**

Substantial justice will be done because allowing an additional apartment will justify, substantial upgrades to the property. This in turn enhances the neighborhood's desirability and value. This creates a public benefit.

**4. The proposed use would not diminish surrounding property values:**

The current 0.3 acre site easily accommodates parking requirements and minimizes any impact on surrounding properties. Proposed structural upgrades not only improve the property, but add to the value of the surrounding properties.

**5. Denial of the variance would result in unnecessary hardship.**

**A). "Unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area:**

**i). No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:**

The resulting two-family use can readily accommodate a third unit, as this third unit was meant to be incorporated by a prior owner who did not obtain proper approvals. Surrounding properties have permitted and legal multi-family structures. Unnecessary hardship will result because the degree to which the property can be improved will significantly decrease without the third unit.

**ii) and; The proposed use is a reasonable one because:**

It is similar to those that exist in the neighborhood. The property is unique in that the existing structure allows for an additional apartment, as was once intended, without increasing any impacts on surrounding properties.

**B) If the criteria in Section (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that property because:**

The size and layout of the "house" portion of the structure, once a large farmhouse, no longer lends itself to practical use as a single unit. Allowing an additional apartment provides for a reasonable adaptive reuse.

**C) Notwithstanding paragraph (B) above, a variance may be granted without finding a hardship arising from the terms of the Zoning Ordinance when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises, provided that: i) The Variance requested under this paragraph shall be in harmony with the general purpose and intent of the Zoning Ordinance because:**

B. Walker stated this was not applicable.

F. Seagroves read into the record correspondence received from abutters:

1. Letter dated 12/20/12 from Diane and William Fuller approving the request for a variance.

2. E-mail dated 12/11/12 from Angela Standbridge stating she and her husband Craig Standbridge oppose the requested variance.

3. E-mail dated 12/17/12 from Angela Standbridge saying she and her husband are now supporting the request.

4. E-mail dated 12/10/12 from Bonnie Caldwell approving the project.

B. Walker said they spoke to two other abutters who were also in favor.

F. Seagroves asked if there were any further questions from the Board.

There were none. He moved to the discussion of the criteria.

**Could the variance be granted without diminishing the value of abutting property?**

Z. Tripp said yes. He didn't believe giving a variance would diminish value of surrounding properties, given the size and layout of the buildings, with plenty of parking and the exterior improvements. There is no evidence that surrounding properties would be reduced in value.

L. Harten agreed. He didn't believe there would be diminution of abutting properties. It is a mixed neighborhood. It appears the owners are doing right things to upgrade the appearance of the property. He believed there would be a public benefit if granted.

B. Pichette said anything will improve it. The applicant is improving his own property, so in turn the other properties will benefit.

F. Seagroves agreed. Adding a third apartment will not change the outside structure. The owners have done some tremendous changes to the building. He goes by there off and on and noticed that building for many years and wondered when someone would finish that porch. He didn't see that it would diminish value of abutting property. If anything, it will help.

**Would granting the variance not be contrary to the public interest?**

B. Pichette said granting the variance would not be contrary to the public interest because it will not alter the character of the neighborhood. The area has single- and multi-family houses. That is the reason.

Z. Tripp said granting the variance would not be contrary to the public interest because it would not unduly or to a marked degree violate the basic zoning objectives of the zoning ordinance. It is still a residence. There will not be substantial change in density or intensity of use. There is plenty of parking so he didn't see there was a public safety threat.

L. Harten agreed, saying granting the variance would not be contrary to the public interest because he believed the hardship to the owners would far outweigh any problem with the public interest. He believed it would be an upgrade to the building and neighborhood.

F. Seagroves agreed with Bob. Refusing would not be a gain to the public. If approved it will let the owners utilize the building better, with not having five bedrooms in one apartment. They could split it up a bit better. He didn't see that the public would gain from refusal.

**Would denial of the variance result in unnecessary hardship taking the following into consideration:**

**A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;**

**ii. The proposed use is a reasonable one.**

**B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.**

L. Harten said he didn't believe there was any fair and substantial relationship between benefits to the public purposes of the ordinance as it exists. Regarding the proposed use being reasonable, he believed that was true. There are three units now. It is upgrading. No problem with public safety or parking. He believed it is a reasonable use. With regard to B, he believed what was requested established a reasonable use of the property as it exists. Re special conditions of the property distinguishing it from other properties in the area, he didn't believe it is a problem. It is a mixed neighborhood. He didn't see three units instead of two being a problem.

Z. Tripp said re no fair and substantial relationship – yes. Since it is existing, non-conforming two-family, restricting applicant to two-family versus multi-family is not necessary to give full effect of the ordinance. He didn't feel restricting to a two-family would not reduce the density or intensity to promote a valid public purpose. No gain to the public. Re the proposed use being a reasonable one, this alteration is reasonable. It is already done. It has probably been used as a three-family in the past. The level of the construction already completed, the use is very reasonable. Regarding special conditions that distinguish the property from others in the area, the handbook states all ordinances are a form of hardship equally shared among the neighborhood. This is not shared equally. There are other three-family buildings in the neighborhood. Restricting this applicant would be a hardship. It is unique, given the size of the building, the barn. He believed they could grant this.

B. Pichette agreed with Len and Zack. Adding a third unit would create income to allow applicant to continue to improve the property.

F. Seagroves agreed. He didn't see general public would gain anything. There are three-family houses along this street and he thought there are five-and six-family. The use is a reasonable one. As was stated, if they have two apartments, they will have one with five bedrooms. Rooms are going to be used anyway; the kitchen would probably be turned into a bedroom. Having a third apartment would not have any affect and it would be a hardship if not granted.

**Would granting the variance do substantial justice?**

L. Harten said yes. It will do substantial justice. The loss to the owner or applicant is not outweighed by any gain to the public or to the Town. He didn't believe there is any problem with substantial justice.

B. Pichette agreed. Improving the property is substantial justice.

Z. Tripp said the exterior is staying the same. Evidence shows they are improving the exterior. No safety concerns. There are ten or so parking spaces for possibly eight bedrooms. Denying this variance would be no gain to the public.

F. Seagroves agreed. This will do substantial justice by allowing a variance to allow another apartment. He thought things will not really change.

**Could the variance be granted without violating the spirit of the ordinance?**

B. Pichette said it will not threaten public health, safety or welfare of the community.

Z. Tripp agreed. Effect of expanding two-family to three-family will not violate the spirit of the ordinance any more than two-family non-conforming does. Given the size, layout and pre-existing construction.

L. Harten agreed. Looking at health, safety and general welfare, the condition of the building as it currently exists in the interior it appears there are health and safety issues that would be

eliminated if they approve the request for variance. It would increase general welfare of the community and neighborhood.

F. Seagroves agreed. Granting would not violate the spirit of the ordinance. As stated, they are looking at health and welfare. He didn't see any affect.

There were no further comments, so the Chair moved to vote on the five criteria:

**1. Could the variance be granted without diminishing the value of the abutting property?**

**B. Pichette – yes; Z. Tripp – yes; L. Harten – yes; F. Seagroves – yes**

**2. Would granting the variance not be contrary to the public interest?**

**Z. Tripp – yes; L. Harten – yes; B. Pichette – yes; F. Seagroves – yes**

**3. Would denying the variance result in unnecessary hardship?**

**L. Harten – yes; B. Pichette – yes; Z. Tripp – yes; F. Seagroves – yes**

**4. Would granting the variance do substantial justice?**

**B. Pichette – yes; Z. Tripp – yes; L. Harten – yes; F. Seagroves – yes**

**5. Could the variance be granted without violating the spirit of the ordinance?**

**L. Harten – yes; B. Pichette – yes; Z. Tripp – yes; F. Seagroves – yes**

Z. Tripp made a motion to approve Case #2012-30.

B. Pichette seconded.

**FINAL VOTE:**

**B. Pichette – yes; L. Harten – yes; Z. Tripp – yes; F. Seagroves – yes.**

The Chair informed applicant he was unanimously approved and reminded him of the thirty day appeal period.

#### **Approval of Minutes – ZBA Meeting January 17, 2013**

At the regularly-scheduled meeting of the Zoning Board of Adjustment, there were minutes to be approved. However, because there were only four members present at the meeting and not all of the members were present who had attended the meetings in question, the Board was able to vote on approval of only two sets of minutes as follows:

1/3/13 Case #2012-30. F. Seagroves, Z. Tripp and L. Harten were present. This was the same case as this evening, where it was tabled.

Z. Tripp moved to approve the minutes.

L. Harten seconded.

All were in favor.

11/1/12 Case #2012-26, K. Johnson, F. Seagroves, Z. Tripp and B. Pichette were present.

L. Harten moved to approve the minutes

Z. Tripp seconded.

All voted in favor.

There being no other business before the Board, the meeting was adjourned at 7:45 p.m.