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Town of Milford
Zoning Board of Adjustment Minutes
Case #2014-05
Map 29, Lot 149
April 3, 2014
Ed & Sharon Densmore
Equitable Waiver

Present: Fletcher Seagroves – Chairman
Zach Tripp
Kevin Taylor
Mike Thornton

Katherine Bauer – Board of Selectmen representative

Absent: Laura Horning

Secretary: Peg Ouellette

The applicants, Ed & Sharon Densmore, owners of 6 Orange St, Map 29, Lot 149, a single-family residence in the Residential A district are requesting an equitable waiver from Article V Sec 5.02.5.B to allow a deck that has been constructed approximately 9 ft. from the side setback line where 15 ft. is required.

MINUTES APPROVED ON JUNE 5, 2014

42 F. Seagroves, Chairman, opened the meeting by stating that the hearings are held in accordance with
43 the Town of Milford Zoning Ordinances and the applicable New Hampshire statutes. He continued by
44 informing all of the procedures and introduced the Board. He read the notice of hearing into the
45 record. The list of abutters was read. Ed and Sharon Densmore, applicants and owners of 6 Orange St,
46 were present and no other abutters were present.

47 Sharon Densmore came forward. The Chairman informed the applicants that since there were only
48 four Board members present, three affirmative votes would be required for approval. They have the
49 option to sign a waiver agreeing to proceed with less than the full five-member Board. The applicant
50 signed the waiver.

51 S. Densmore stated when they bought the property it needed work. The back raised patio, which had
52 been stone, was tipping and causing water to go into the basement. They put in drainage and raised
53 the elevation of the patio or deck, moving it back three ft from where it had been. They decreased the
54 existing footprint and made it smaller. They couldn't go back 15 ft because it wouldn't look right. Bill
55 Parker at the Community Development office said they needed a building permit and then they didn't
56 hear back. When they were finished they were informed they needed an equitable waiver.

57 F. Seagroves asked for questions from the Board. There were none. He then asked to confirm that the
58 footprint had not been increased.

59 S. Densmore responded it had decreased and needed to be replaced because it was rotting out. There
60 were no other questions from the Board.

61 F. Seagroves opened the meeting for public comment; there being none, the public portion of the
62 meeting was closed.

63 S. Densmore read the application into the record. An Equitable Waiver of dimensional
64 requirements from Article V Section 5.02.5.B of the Zoning Ordinance is requested to permit: A
65 deck that has been constructed approximately 9 ft from the side setback line where 15' is
66 required.

67 **1. Explain how the violation was not noticed or discovered by any owner, former owner,**
68 **owner's agent or representative, or municipal official, until after a structure in violation**
69 **had been substantially completed, or until after a lot or other division of land in**
70 **violation had been subdivided by conveyance to a bona fide purchaser for value:**

71 Rebuilding a pre-existing structure

72 **2. A. Explain how the violation was not an outcome of ignorance of the law or**
73 **Ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part**
74 **of any owner or owner's agent or representative, but was instead caused by either a**
75 **good faith error in measurement or calculation made by an owner or owner's agent, or**
76 **by an error in Ordinance interpretation or applicability made by a municipal official in**
77 **the process of issuing a permit over which that official had authority:**

78 or

79 **In lieu of 2.A, demonstrate that the violation has existed for 10 years or more, and that**
80 **no enforcement action, including written notice of violation, has been commenced**
81 **against the violation during that time by the municipality or any person directly**
82 **affected:**

83 Rebuilding pre-existing structure. Applicant stated that, to her knowledge, it was a pre-
84 existing structure for more than 30 years.

85 **3. Explain how the physical or dimensional violation does not constitute a public or**
86 **private nuisance nor diminish the value of other property in the area, nor interfere with**
87 **or adversely affect any present or permissible future uses of any such property:**

88 There is no public or private nuisance, value of property increased, no decrease to other
89 property, all abutters approve of improvements.

90 **4. Explain how that due to the degree of past construction or investment made in**
91 **ignorance of the facts constituting the violation, the cost of correction so far outweighs**

92 **any public benefit to be gained, that it would be inequitable to require the violation to**
93 **be corrected:**

94 All houses built on Orange St. are built within 6' of property lines so all garages, sheds,
95 decks, porches, etc. are non-conforming to existing setback rules – the cost to dismantle
96 would outweigh any public benefit.

97 F. Seagroves read two letters from abutters into the record, from James Townsend of 10 Orange
98 St and Paul Hermandinger of 4 Orange St, both of whom had no objection to the deck being
99 allowed to remain.

100 F. Seagroves asked if the Board had any comments or questions; they did not so they discussed
101 the criteria for an equitable waiver.

102 **1. That the violation was not noticed or discovered until after a structure in violation**
103 **had been substantially completed or until after a lot had been subdivided by the**
104 **conveyance.**

105 Z. Tripp – yes. Per the applicant's testimony, they rebuilt an existing structure that was non-
106 conforming. They requested and followed the permit rules.

107 K. Taylor agreed with Zach, and said it was pre-existing and they were reducing it.

108 M. Thornton said they were able to make it less non-conforming.

109 F. Seagroves agreed. They were repairing, maintaining the building, and made the footprint
110 smaller.

111 **2. That the violation was not an outcome of ignorance of the law, or ordinance, failure**
112 **to inquire, obfuscation, misrepresentation, or bad faith but was instead caused by either**
113 **a good faith error in ordinance interpretation or applicability made by a municipal**
114 **official.**

115 Z. Tripp believed it was done in good faith. They made it less non-conforming.

116 K. Taylor – yes. It was done in good faith.

117 M. Thornton – yes.

118 F. Seagroves – They did get a building permit, by doing this found they needed to come
119 before the ZBA. He didn't think it was done intentionally.

120 **3. That the physical or dimensional violation does not constitute a public or private**
121 **nuisance , nor diminish the value of other property in the area, nor interfere with any**
122 **future used of such property.**

123 K. Taylor – yes. There was no nuisance.

124 M. Thornton said it looks good.

125 Z. Tripp said it was behind the building so he didn't see how it would create a nuisance.

126 F. Seagroves said the deck was behind the house. He hadn't seen the deck but had seen the
127 porch, which was very nice.

128 M. Thornton agreed that it was very well done.

129 **4. That due to the degree of past construction or investment the cost of correction so far**
130 **outweighs any public benefit to be gained, that it would be inequitable to require the**
131 **violation to be corrected.**

132 K. Taylor – yes, due to the degree of past construction.

133 M. Thornton – yes.

134 Z. Tripp – The property gained by making it less non-conforming. Property most to gain or
135 lose would be abutters, who did not object.

136 F. Seagroves agreed. What they replaced was already there, they were making it safer.

137 S. Densmore commented they were also flushing water away. F. Seagroves agreed there would
138 probably be more damage caused to the house if not done.

139 F. Seagroves asked if the Board had any additional comments or questions; they did not so he
140 called for a vote.

141 **1. That the violation was not noticed or discovered until after a structure in**

142 **violation had been substantially completed or until after a lot had been sub-**
143 **divided by the conveyance.**
144 Z. Tripp – yes, K. Taylor – yes, M. Thornton – yes, F. Seagroves – yes.
145 **2. That the violation was not an outcome of ignorance of the law, or ordinance,**
146 **failure to inquire, obfuscation, misrepresentation, or bad faith but was instead**
147 **caused by either a good faith error in ordinance interpretation or applicability**
148 **made by a municipal official.**
149 K. Taylor – yes, M. Thornton – yes, Z. Tripp – yes, F. Seagroves – yes.
150 **3. That the physical or dimensional violation does not constitute a public or private**
151 **nuisance, nor diminish the value of other property in the area, nor interfere with**
152 **any future uses of such property.**
153 M. Thornton – yes, K. Taylor – yes, Z. Tripp – yes, F. Seagroves – yes.
154 **4. That due to the degree of past construction or investment the cost of correction**
155 **so far outweighs any public benefit to be gained, that it would be inequitable to**
156 **require the violation to be corrected.**
157 Z. Tripp – yes, K. Taylor – yes, M. Thornton – yes, F. Seagroves – yes.
158 K. Taylor made a motion to approve Case #2014-05.
159 M. Thornton seconded the motion.
160 **Final Vote - All voted in favor.**
161 Case #2014-05 was approved by a unanimous vote.
162 F. Seagroves reminded the applicant of the thirty day appeal period, but since they have already
163 done the construction, they should check with the Office of Community Development on what
164 they could do.