



City of Rochester, New Hampshire

Zoning Board of Adjustment

Appeal of Administrative Decision Application

TO: BOARD OF ADJUSTMENT
CITY OF ROCHESTER

DO NOT WRITE IN THIS SPACE

CASE NO. 2-23-08

DATE FILED 3/10/23

C9
ZONING BOARD CLERK

Applicant: Jack & Lynn Lagasse, Trustees of the Lagasse Family Revocable Trust C/O Brett W. Allard, Esq., Shaughnessy Raiche, PLLC

E-mail: brett@srlaw-nh.com Phone: (603) 644-4357 x3

Applicant Address: 24 Eastman Avenue, Suite C3, Bedford, NH 03110

Property Owner: Jack & Lynn Lagasse, Trustees of the Lagasse Family Revocable Trust

Property Owner Address: 10 Shelby Lane, Unit 1, Rochester, NH 03839

Appeal Address: 10 Shelby Lane, Rochester, NH 03839

Map Lot and Block No: Tax Map 138, Lot 11

Description of Property (give length of lot lines): 1.6 acres

Proposed use or existing use affected: Existing Use: Multifamily Dwelling. Proposed Use: Multifamily Development.

The undersigned alleges that an error has been made in the decision, determination, or requirement of:

Ryan O'Connor, Senior Planner on February 8, 2023 to see attached.

Name if enforcement officer

date

decision

in relation to Article Table 18-A Section _____ of the Zoning Ordinance and hereby
appeals said decision.

Signed: Brett W. Allard

Date: 3-9-2023

By: Brett W. Allard, Esq, Attorney for the Applicant/Landowner



From: Ryan O'Connor <ryan.oconnor@rochesternh.gov>
Sent: Wednesday, February 8, 2023 10:44 AM
To: Eric Salovitch <eric@northamsurvey.com>
Cc: info@northamsurvey.com
Subject: 10 Shelby Lane

Good morning Eric,

Following-up on my phone message today regarding the application for an additional unit on 10 Shelby Lane in Rochester.

It looks like the proposal is for a single-family home on the property in addition to the multifamily unit which already exist. Unfortunately, the City doesn't allow multifamily and single-family to be combined on the same lot. Single-family homes and duplexes are required to be on their own independent lot. So, in this case, we couldn't allow the single family in conjunction with the existing multi-family use.

A multi-family development is allowed, which would be an additional building with three or more units. It does seem the lot area could support three additional units, but I don't know about the restrictions with the shoreland setback.

The other option is to go for a variance to allow for a single-family home as part of a multifamily development. The lots proximity to the river does make it unique and mitigating shoreland impacts could be something to consider as a hardship.

Please give me a call to discuss if you have questions. Your office also contacted us yesterday regarding application fees, I can confirm we've received the correct amount for the Minor Site Review.

Thank you,

Ryan O'Connor
Senior Planner

City of Rochester
City Hall Annex, 33 Wakefield Street
Rochester, NH 03867

Email: Ryan.oconnor@rochesternh.net
Phone: (603) 335-1338

INTRODUCTION

Jack and Lynn Lagasse, in their capacity as Trustees of the Lagasse Family Revocable Trust (collectively, the “Applicant”) are the owners of the approximately 1.6-acre property situated at 10 Shelby Lane (Tax Parel 138-11) along the Cochecho River. The lot is situated in the Residential-2 (“R-2”) District. The property is improved with an existing four-unit multifamily dwelling and detached garage. The dwelling was originally constructed in approximately 1892. As shown on the enclosed plan, the Applicant proposes to remove the existing garage and construct a new detached garage with an additional second story dwelling unit above, resulting in a total of five units within two buildings on the property.

As set forth in the enclosed correspondence dated February 8, 2023, Ryan O’Connor, Senior Planner, has taken the position that, while an additional building with three or more units would be permitted by right, “the City doesn’t allow multifamily and single-family to be combined on the same lot”, so the construction of only one additional unit as proposed by the Applicant requires a variance from the ZBA. The crux of the Senior Planner’s decision is that the definition of ‘Single-Family Dwelling” contained in Section 275-2.1 of the zoning ordinance provides that a “Single-Family Dwelling occupies its own individual lot on which there is no other dwelling or principal use”, and since there is an existing multifamily building on the subject property, a variance is required to allow the additional “Single-Family Dwelling” unit. For the reasons set forth below, the Applicant submits that this decision is in error and requests that the ZBA reverse same and hold that a variance is not required to permit construction of the additional dwelling unit.

ADMINISTRATIVE APPEAL

The administrative decision is in error because the Applicant’s proposal cannot be properly classified as a “Single-Family Dwelling.” Rather, the proper classification for the project under the terms of the zoning ordinance is a Multifamily Development. Multifamily Developments (Dwelling, Multifamily Development) are permitted by right in the R-2 District pursuant to Table 18-A of the zoning ordinance pertaining to residential uses. Section 275-2.2 of the zoning ordinance defines a Multifamily Development as a “development containing two or more buildings containing three or more residential units in total on the same lot. Multifamily development can take many forms.”

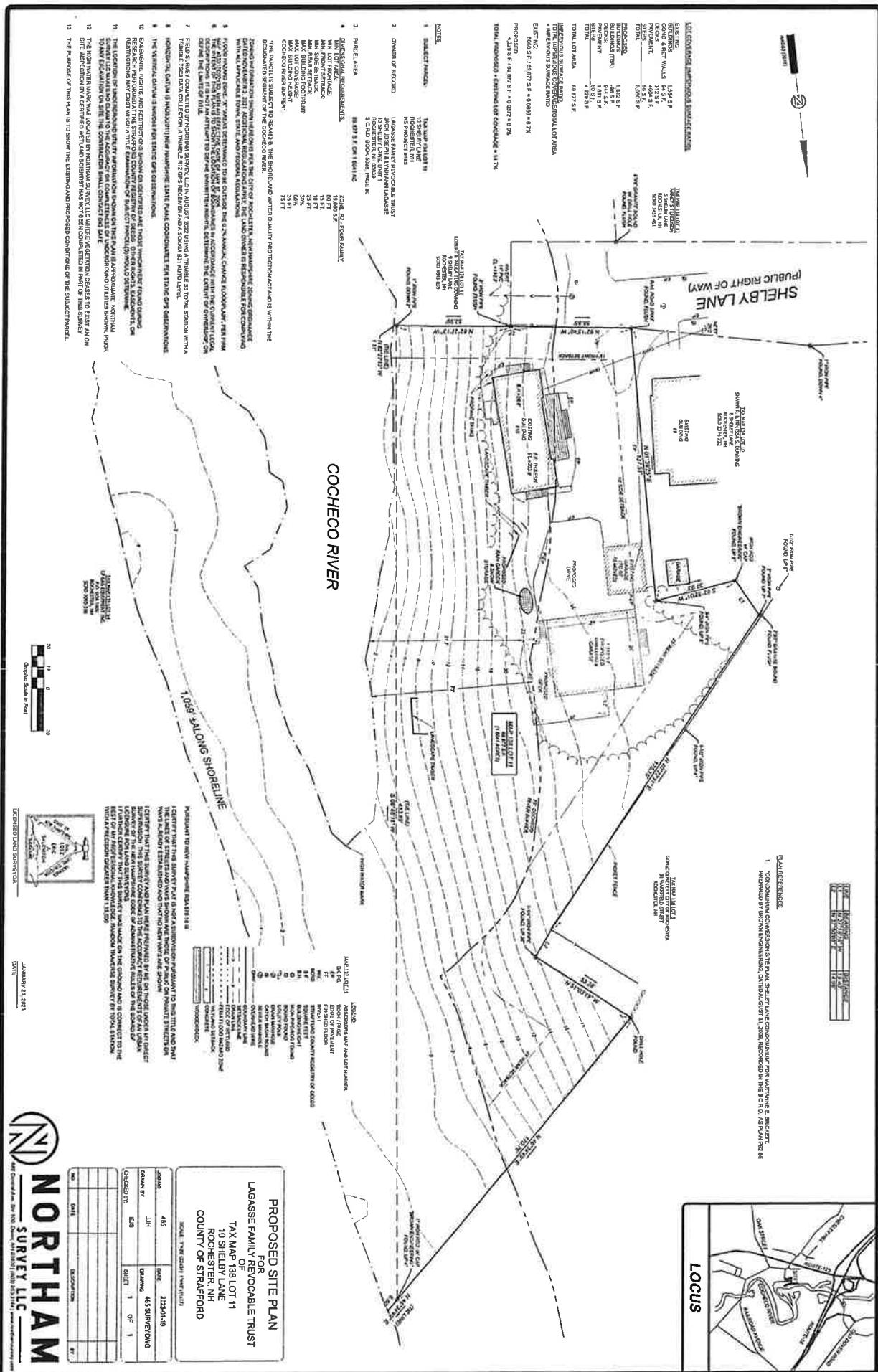
“Where the ordinance defines the term and issue, the definition will govern.” See 15 New Hampshire Practice: Land Use Planning and Zoning, Ch. 6.01. “If the language is plain and unambiguous, [the Court] need not look beyond the ordinance itself for further indications of legislative intent.” Boyle v. City of Portsmouth, 154 N.H. 390 (2006).

As such, here, the above-referenced plain and unambiguous definition of a “multifamily development” contained within the zoning ordinance controls. The Applicant’s project falls squarely within that definition because they are proposing two buildings containing five units in total on the same lot. There is no authority in the zoning ordinance supporting the Senior Planner’s position that each building on the lot must contain three or more units in order to constitute a multifamily development. Such an interpretation is contrary to the plain and unambiguous definition of a “multifamily development” contained in the zoning ordinance. Rather, in order to constitute a multifamily development, there simply must be “two or more buildings containing three or more

residential units in total on the same lot”, which is precisely what the Applicant has proposed. In other words, the Applicant is proposing to convert the use of the property from a Multifamily Dwelling use to a Multifamily Development use – both of which are permitted by right in the R-2 District where the subject property is located.

The Senior Planner’s analysis is too narrow – it focuses solely on the proposed new unit and ignores the existing multifamily building. However, taken together, the existing four-unit multifamily building and the proposed new dwelling unit over the garage fall squarely within the definition of a Multifamily Development, which is permitted by right in the R-2 District. Moreover, to the extent the Senior Planner’s decision is based upon the Town’s alleged historic interpretation of the zoning ordinance, “administrative interpretation is irrelevant where it is in clear conflict with express statutory language.” King-Jennings v. Liberty Mut. Ins. Co., 144 N.H. 559 (1999).

Accordingly, the Applicant respectfully requests that the ZBA reverse the decision of the Senior Planner and hold that a variance is not required because the Applicant’s proposal constitutes a Multifamily Development which is permitted by right in the R-2 District.



ZONING

275 Attachment 1

City of Rochester

Table 18-A Residential Uses
[Amended 4-4-2017; 3-5-2019; 5-7-2019]

LEGEND
 P = Permitted Use
 C = Conditional Use
 E = Use Allowed by Special Exception

Residential Uses	Residential Districts				Commercial Districts				Industrial Districts			Special		Criteria/Conditions	Reference
	R1	R2	AG	NMU	DC	OC	HC	GI	RI	HS	AS	E	P		
Apartment, accessory (accessory use)	E	P	P	P	P	P	P	—	—	—	—	—	—	Article 21 and 23	
Apartment, in-law	P	P	P	P	P	P	P	—	—	—	—	—	—	—	
Apartment, security	—	P	—	P	P	P	P	P	P	P	P	P	P	Articles 2 and 23	
Assisted living facility	—	C	C	C	C	C	C	—	—	C	—	—	—	Article 21	
Boardinghouse	—	—	—	E	—	—	—	—	—	—	—	—	—	—	
Community residence-1	—	E	E	—	E	E	E	—	E	E	E	—	—	Article 22	
Community residence-2	—	E	—	—	E	—	—	E	—	E	E	—	—	Article 22	
Conservation subdivision	C	C	—	—	C	C	C	—	—	—	—	—	—	Articles 21 and 33	
Dwelling, apartments (apartment/mixed-use building)	—	—	P	P	C	P	P	—	—	—	—	—	—	Article 21	
Dwelling, multifamily development	—	P	—	—	P	—	P	—	—	—	—	—	—	Articles 20 and 22	
Dwelling, multifamily	—	P	—	—	P	—	P	—	—	—	—	—	—	—	
Dwelling, single-family	P	P	P	—	P	P	P	—	—	P	—	—	—	—	
Dwelling, two-family	—	P	P	P	C	P	P	—	—	—	—	—	—	Articles 21 and 33	
Flag lots	—	C	C	—	—	—	—	—	—	C	—	—	—	Article 21	
Home occupation-1 (accessory use)	P	P	P	P	P	P	P	—	—	P	—	—	—	Article 24	
Home occupation-2 (accessory use)	P	P	P	P	P	P	P	—	—	P	—	—	—	Articles 22 and 24	

ROCHESTER CODE

Residential Uses	Residential Districts				Commercial Districts				Industrial Districts			Special		Criteria/Conditions Reference
	R1	R2	AG	NMU	DC	OC	HC	GI	RI	HS	AS			
Home occupation-3 (accessory use)	—	E	E	P	P	P	P	—	—	E	—			Articles 22 and 24
Manufactured housing unit on own lot	—	—	P	—	—	—	—	—	—	—	—			Articles 20 and 21
Nursing home	—	—	C	—	C	—	—	—	—	P	—			Articles 20 and 21
Outdoor wood-fired hydronic heater	—	—	P	—	—	—	—	—	—	—	—			Article 20
Porkchop subdivision	—	—	C	—	—	—	—	—	—	—	—			Article 21
Residential facility	—	—	E	—	—	E	—	—	E	E	—			Article 22
Senior housing	—	P	C	C	C	C	—	—	—	—	—			Article 21
Temporary structure	P	P	P	P	P	P	P	P	P	P	P			Article 20
Zero lot line development	C	C	—	—	C	C	—	—	—	—	—			Article 33

10 Shelby Lane



3/13/2023, 2:28:00 PM

1:1,128

Tax Parcels

0 0.01 0.01 0.02 0.02 mi
0 0.01 0.02 0.04 km

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Property Location 10 SHELBY LN
Vision ID 5667

Land Use 1100
Print Date 11/8/2021 10:27:35 A

Parcel ID 0138/0011/00000 /

BUILDING NOTES

BUILDING PERMIT RECORD							Notes
Issue Date	Permit Id	Description	Price	Insp Date	% C	Stat	
09-14-2021	M-21-454	HEATING SYS	26,750	04-02-2021	0	O	boiler, baseboard heat, indirect water heater, gas piping
01-18-2021	M-21-53	HEATING SYS	3,250	01-09-2012	100	CE	new propane zone heater
12-20-2020	1572	WATER HEATE	1,800	01-15-2010	100	CE	APT. 1
06-02-2009	09-540	STG TANK	2,300	01-15-2010	100	CE	
05-23-2006	06-556	ROOFING	11,000	12-05-2006	100	CE	PROPANE TANKS

VALUATION METHOD			VISIT / CHANGE HISTORY			PURPOSE/RESULT		
Total Appraised Parcel Value	Valuation Method	C	Date	Id	Notes	Date	Id	Notes
276,500		C						
219,100	Appraised Building Value (Card)							
0	Appraised Extra Feature Value (Bldg)							
10,400	Appraised Outbuilding Value (Bldg)							
47,000	Appraised Land Value (Bldg)							
276,500	Total Appraised Parcel Value							

LAND LINE VALUATION SECTION

B	LUC	Description	LandU	Land Type	Loc Adj	UnitPric	Size Adj	Cond	Nbhd	Infl1	Infl1 Adj	Infl2	Infl2 Adj	Infl3	Infl3 Adj	Adj UnitPrice	Appraised Value	Assessed Value	Notes
1	1100	FOUR FAMI	1.000	PRIMARY EXCESS A	P	1.000	45,000	1.000000	1.00	2004	1,000					45,000	45,000		
	1100	FOUR FAMI	0.800		E	1.000	2,500	1.000000	1.00	2004	1,000					2,500	2,000		
Total Card Land Units				1.80 AC		Parcel Total Land Area		1.80 AC								Total Land Value		47,000	

Disclaimer: This information is believed to be correct but is subject to change and is not warranted.

Property Location 10 SHELBY LN
Vision ID 5667

Parcel ID 0138/0011/0000U /
CONSTRUCTION DETAIL

Card # 1 of 1
Sec # 1 of 1
Bldg # 1
Account # 5667

Land Use 1100
Print Date 11/8/2021 10:27:36 A

Element	Cd	Description	Element	Cd	Description
Model Style	03 23M C	MULTI-FAMILY AVERAGE	Half Bath Rating	0	
Grade Stores	2		Extra Fixture(s)	0	
Units Residential Unit Comm Units	4 0				
Exterior Wall 1	04	VINYL	CONDOS DATA		
Exterior Wall 2	0		Condo Main	7	Complex #
2nd Ext Wall %	0		Adjust Type	Code	Building #
Roof Structure	01	GABLE ASPH SHINGLE DRYWALL	Condo Floor		Section #
Roof Cover	01		Condo Location		% Owner
Interior Wall 1	01	AVERAGE			
Interior Wall 2	0		Building Value New	322,146	
2nd Int Wall %	08		Year Built	1892	
Interior Floor 1	08		Depreciation Code		
Basement Floor	12	CONCRETE	Remodel Rating		
% Heated	100.00	PROPANE	Year Remodeled		
Heat Fuel	10	SPACE HTRS	Depreciation %		
Heat Type	07		Functional Obsol		
2nd Heat Type	0.00		Economic Obsol		
2nd % Heated	0.00		Trend Factor		
# Heat Systems	4.00		Special Adj		
AC Percent	0.00		Condition %		
Bedrooms	5		Percent Good		
Full Bath(s)	1	SAME	RCNLD		
Bath Rating	A		Dep % Ovr		
3/4 Bath(s)	3	SAME	Dep Ovr Comment		
3/4 Bath Rating	A		Misc Imp Ovr		
Half Bath(s)	0		Misc Imp Ovr Comment		
Half Bath Rating			Cost to Cure Ovr		
Extra Fixture(s)	0		Cost to Cure Ovr Comment		
OB - OUTBUILDING & YARD ITEMS(L) / XF - BUILDING EXTRA FEATURES(B)					
Code	Description	L/B	Qty	Dim 1	Dim 2
04	GARAGE FR	L	1	24	C
				AV	
				1901	% Gd
				70	Unit Price
					25.75
					1.00
					Appr. Value
					10,400
BUILDING SUB-AREA SUMMARY SECTION					
Code	Description	Living Area	Floor Area	Eff Area	Unit Cost
BMT	BASEMENT	0	1,184	296	24.77
FFL	1ST FLOOR	1,184	1,184	1,184	99.06
OPF	OPEN PORCH	0	270	0	39.13
SFL	2ND FLOOR	1,184	1,184	1,184	99.06
Tot Gross Liv / Lease Area					
		2,368	3,822	2,664	274,465



COUTURE ERNEST JR & LINDA
22 PICKERING RD
ROCHESTER, NH 03839-4626

HARTE DENNIS P &
CARR LINDA M
11 ELECTRIC AVE
ROCHESTER, NH 03839-5257

ROMAN CATHOLIC BISHOP %
FINANCE & REAL ESTATE OFFICE
153 ASH ST
MANCHESTER, NH 03104-4396

GONIC CEMETERY
% CITY OF ROCHESTER
31 WAKEFIELD ST
ROCHESTER, NH 03867-1917

LAGASSE FAMILY REVOCABLE TRUST
LAGASSE JACK JOSEPH & LYNN ANN
10 SHELBY LN UNIT 1
ROCHESTER, NH 03839-5260

FECTEAU JOEL
6 SHELBY LN
ROCHESTER, NH 03839-5230

TING DOWNING PAULA
DOWNING ROBERT
9 SHELBY LN
ROCHESTER, NH 03839-5231

DUNNING SHAWN P & MELISSA S
8 SHELBY LN
ROCHESTER, NH 03839

LP GAS EQUIPMENT INC
ACCOUNT 58314/120
P O BOX 1800
ROCHESTER, NH 03866-1800