



City of Rochester, New Hampshire

Zoning Board of Adjustment

Variance Application

TO: BOARD OF ADJUSTMENT
CITY OF ROCHESTER

DO NOT WRITE IN THIS SPACE

CASE NO. 2-23-09

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@srllaw-nh.com

Phone: (603) 644-4357 x3

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

Property Owner (if different): Jack & Lynn Lagasse, Trustees of the Lagasse Family Revocable Trust

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

Variance Address: 10 Shelby Lane, Rochester, NH 03839

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

Description of Property: 1.6 acres - see attached plan.

Proposed use or existing use affected: Multifamily

The undersigned hereby requests a variance to the terms of the Rochester Zoning Ordinance, Ch. 275, Section 242.2

and asks that said terms be waived to permit an additional dwelling unit on the lot that also contains an existing

multifamily building.

The undersigned alleges that the following circumstances exist which prevent the proper enjoyment of his land under the strict terms of the Zoning Ordinance and thus constitute grounds for a variance. **I understand that while presenting my case the testimony should be confined to the 5 criteria and how they pertain to my case.**

Signed: Brett W. Allard

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

Date: 3-9-2023



City of Rochester, New Hampshire

Zoning Board of Adjustment

Variance Criteria

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

See attached.

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

See attached.

3) Granting the variance would do substantial justice because:

See attached.

4.) If the variance were granted, the values of the surrounding properties would not be diminished because:

See attached.

5.) Unnecessary Hardship:

a. Owing to special **conditions of the property that distinguish it from other properties in the area**, denial of the variance would result in an unnecessary hardship because:

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:

See attached.

And:

ii. The proposed use is a reasonable one because:

See attached.

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

N/A

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 Parcel 138-11) along the Cocheco 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. The Applicant has filed an administrative appeal of that decision contemporaneously herewith and, for the reasons set forth therein, submits that no such variance is required. As such, this variance application is submitted without prejudice to the Applicant’s position set forth in the administrative appeal.

Nonetheless, for the reasons set forth below, the Applicant has satisfied the variance criteria to allow for construction of the proposed additional dwelling unit. Accordingly, the Applicant requests that the Board grant a variance from the definition of “Single-Family Dwelling” contained in Section 275-2.1 of the zoning ordinance to allow the new dwelling unit on the lot that also contains an existing multifamily building.

1. Granting the variance will not be contrary to the public interest.

For a variance to be contrary to the public interest, the proposal has to conflict with the ordinance so much that it violates the ordinance’s basic zoning objectives. The relevant tests are (1) whether the proposal will alter the essential character of the neighborhood; and (2) whether it threatens the public health, safety or welfare. See Farrar v. City of Keene, 158 N.H. 684 (2009).

Granting the variance will not alter the essential character of the neighborhood because the property will remain consistent with the residential nature of the area. As such, the Applicant’s proposal is consistent with the character of the area. Moreover, given the configuration of the lot, even with the shoreline, side, and rear setbacks, there is sufficient buildable area for the proposed dwelling unit. Since the lot is serviced by municipal water and sewer, no additional area needs to be dedicated to installation of a well and septic

system, and the lot can support the Applicant's proposal. There will be no adverse impact or injury to any public rights if the variance is granted. There will be no threat to public health, safety, or welfare if the variance is granted. Therefore, granting the variance would not be contrary to the public interest.

2. Granting the variance will be consistent with the spirit of the ordinance.

The spirit of the prohibition against single-family dwellings on lots where there is another dwelling or principal use is primarily a mechanism to avoid overcrowding and congested development. However, granting the variance will not result in any overcrowding or congested development because there is plenty of parking area to support the new and existing units, and the proposed garage and dwelling fits entirely within the building envelope without encroaching into any setbacks. Further, as set forth above, the Applicant's proposed residential use is consistent with the residential character of the area. Therefore, granting the variance will be consistent with the spirit of the zoning ordinance.

3. Granting the variance would do substantial justice.

The Supreme Court has held that measuring substantial justice requires balancing public and private rights. "Perhaps the only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice." Harborside Assocs., L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508, 515 (2011). There is no injury to the public if the variance is granted. There is no gain to the public if the variance is denied. There is only loss to the Applicant if the variance is denied. Therefore, when balancing public and private rights, the loss to the Applicant if the variance is denied outweighs any loss or injury to the public if the variance is granted. Additionally, for the reasons set forth above, the proposed dwelling unit is "appropriate for the area". See U-Haul Co. of New Hampshire & Vermont v. City of Concord, 122 N.H. 910, 913 (1982). Granting variances that are appropriate for the area does substantial justice. Therefore, granting the variance would do substantial justice.

4. The values of the surrounding properties will not be diminished.

If the variance is granted, the lot will remain consistent with the residential character of the other lots in the neighborhood such that there will be no adverse effect on surrounding property values. The proposed residential use is consistent with abutting residential uses. The Applicant is not requesting to build structures within any setbacks closer to abutting properties than is otherwise allowed under the zoning ordinance such that the value of surrounding properties could potentially be compromised. There is sufficient parking space on the property to support the new and existing units without impacting the neighbors. Therefore, surrounding property values will not be diminished.

5. Literal enforcement of the ordinance would result in unnecessary hardship

Unnecessary hardship will be found when the subject property has special conditions or circumstances that distinguish it from other properties in the area and (1) there is no fair

and substantial relationship between the purpose of the ordinance and the specific application of the ordinance as applied to the property; and (2) the proposed use is reasonable.

The Applicant's property is distinguishable from other properties in the area. The lot is situated at the end of a Shelby Lane. The pavement of the street essentially feeds into a large parking area in front of the existing multifamily building and garage. The property is also situated along the Cocheco River and has a very unique shape, including a peninsula within the river itself. Other lots in the area do not share all of these unique features. Indeed, the Senior Planner's opinion is that the "lots proximity to the river does make it unique."

Owing to these special conditions, among others, there is no fair and substantial relationship between the purpose and application of the prohibition against one additional dwelling unit on the lot. Notwithstanding the shoreline, side, and rear setbacks, the lot can support the Applicant's proposal. Given the configuration of the lot, there is sufficient buildable area for the proposed dwelling unit. There will be no overcrowding or congested development on the lot or in the neighborhood because there is ample parking to support the new and existing units, and the proposed garage and dwelling fits entirely within the building envelope. Since the lot is serviced by municipal water and sewer, no additional area needs to be dedicated to installation of a well and septic system. The Applicant's proposal is also well below the lot coverage requirement for a property in the R-2 District with five dwelling units. The Applicant is proposing 14.7% of total lot coverage where up to 60% is allowed. In other words, granting the variance will result in less than a quarter of the total lot coverage being occupied.

Accordingly, the purposes that the zoning ordinance seeks to protect are not in any way threatened if the variance is granted. Therefore, the Applicant can show unnecessary hardship and the variance should be granted.

The proposed use is reasonable.

For all of the foregoing reasons, which are incorporated herein by reference, the proposed use is reasonable.



275-2.2Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

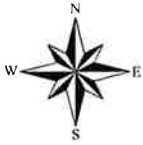
DWELLING, SINGLE-FAMILY (or SINGLE-FAMILY HOUSE)

A detached dwelling which:

A. Contains exactly one residential unit (except for accessory apartments, where permitted);

B. Is not attached to any other dwelling or residential unit; and

C. Occupies its own individual lot on which there is no other dwelling or principal use.



10 Shelby Lane

City of Rochester, NH

1 inch = 94 Feet



www.cai-tech.com

March 13, 2023



Data shown on this map is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this map.

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
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