

**City of Keene**  
**New Hampshire**

**ZONING BOARD OF ADJUSTMENT**  
**SPECIAL MEETING MINUTES**

**Monday, May 16, 2023**

**6:30 PM**

**Rm 22,  
Recreation Center**

**Members Present:**

Joseph Hoppock, Vice Chair  
Jane Taylor, Vice Chair  
Joshua Gorman

**Staff Present:**

John Rogers, Zoning Administrator  
Corinne Marcou, Zoning Clerk

**Members Not Present:**

Michael Welsh  
Richard Clough

**I) Introduction of Board Members**

Chair Hoppock called the meeting to order at 6:30 PM and explained the procedures of the meeting. Roll call was conducted.

**II) Minutes of the Previous Meeting**

Chair Hoppock stated that they are not approving any minutes tonight.

**III) Unfinished Business**

Chair Hoppock stated that there is no unfinished business.

**IV) Hearings**

**A) ZBA 23-15: Petitioner, Jeremy Chartier of Resolve Ventures, LLC of 52 Nashua, St., Milford, NH, requests an extension for property located at 193 South Lincoln St., Tax Map #586-014-000-000-000, is in the Medium Density District. This property is owned by Daniel S. Chabott Sr. and Jennifer L. Chabott of 198 Old Wendell Rd., Northfield, MA that was damaged on May 24, 2022, by no means within the control of the owner. The Petitioner requests an extension to rebuild the nonconforming use per Chapter 100, Article 18.2.7 and 18.3.4 of the Zoning Regulations.**

Chair Hoppock asked Zoning Administrator John Rogers to explain why the Board is here tonight.

Mr. Rogers stated that this property at 193 South Lincoln St. is in the Medium Density District (MD). He continued that this was a two-family home on a non-conforming lot. Two-family homes are allowed in the MD, but it is based off the density factor. Eight thousand square feet are required for the first single-family dwelling unit, and another 5,600 square feet are required for the second. This property was non-conforming both for the lot size and [most likely the setbacks]. Staff would have to do more research if this extension were granted, or even moving forward if this lot were to be redeveloped. It is a corner lot and thus has a larger side setback. They believe the previous structure was probably encroaching upon the side setback, and most likely the front setback as well. Based on those nonconformities, under Article 18, there is the ability to rebuild when there has been damage to the structure at no fault of the owner. For example, if it was not a situation where the owner decided to tear it down and rebuild a non-conformity. In that case, they would have to conform to the Zoning Code. There is exception here, in two areas. One is for Non-Conforming Uses under Article 18. This was an allowed use in the district, but non-conforming because it did not have enough square footage. There is also [an exception] for structures that are non-conforming due to dimensional requirements. That states: *“In the event that any non-conforming structure is damaged or destroyed without any contributing fault by the property owner or tenant, it may be repaired or rebuilt to the same size and dimension as previously existed, provided that a building permit is obtained within one year following the damage or destruction unless a one-year extension is granted by the Zoning Board of Adjustment.”*

Mr. Rogers continued that that is why the applicant is before the Board tonight. This building had a fire on May 24, 2022, and May 24 is coming right up. The applicant is asking for an extension to that time period, as is stated in the Land Development Code (LDC). A problem in the LDC, which they will probably have a discussion about at some point as “New Business,” is there is no application process or criteria for the Board to look at. Right now, this is a determination by the Board, regarding whether the Board believes there is some reason for the Board to grant that one year extension. It is up to the Board to decide that. With that, there is no real procedure regarding notification. If someone walked in today with a building permit application to build a two-family home on that lot, and it was a complete application that the Plans Reviewer could review and issue the permit for before the 24<sup>th</sup>, that is what would happen and there would be no public notification. The fact that there was no procedure laid out in the LDC led staff to take a more stringent reading of it and they applied the higher standard to the notification for this application. The applicant filled out an application and abutters were noticed. Again, the Board is here tonight to decide whether to grant an extension, and it is not about whether, for example, it should be a two-family home on a substandard lot. The question is only whether an extension is warranted, in the Board’s opinion.

Chair Hoppock stated that the Ordinance says the Board may grant a “one year extension of this period,” and that is it. Mr. Rogers replied that is correct. Chair Hoppock stated that in his

opinion, the standard would be whether there is good cause to extend for a year. Even though it is not in (the LDC), it seems to make sense it is going to be equitable.

Ms. Taylor replied that that was part of her question, and she is wondering whether it was damaged or destroyed without the cause of the owner. Mr. Rogers replied that his understanding is that the insurance company determined that the fire was [unfinished sentence]. Ms. Taylor replied that she meant that is part of the standard, to determine that. Mr. Rogers replied that is correct. Ms. Taylor asked if they are going under the “non-conforming structure.” Mr. Rogers replied that he is not sure, and they both say the same thing. He continued that he feels there is a bit of a non-conforming use, but it is based on dimensions. A two-family home is an allowed use in the district, but it is non-conforming because the lot is substandard for a two-family home in the MD. In addition, there are some other dimensional provisions that this structure most likely violated. Staff would have to research that more and deal with that prior to issuance of a building permit. As he mentioned, he thinks the setbacks were also non-conforming.

Ms. Taylor replied that she was a little confused, because Article 18.2.7 says, “*The non-conforming use may be reestablished providing no new non-conformities are created.*” She continued that then it says that if it is not extended, then they would have to conform to all the regulations. Mr. Rogers replied that is correct. Ms. Taylor stated that the language is the same in both. Mr. Rogers replied that is correct. He continued that if the extension were not granted, then any use of this lot would require a Variance from this Board, because this lot is substandard even for a single-family home, based on the square footage. Eight thousand square feet are required and this lot has 5,227 square feet.

Mr. Rogers stated that the applicant would be able to speak to this more, but a demolition permit was issued for this property in December 2022. He continued that staff’s final inspection happened in February 2023. The structure was demolished in the middle of winter. He would let the applicant speak to the time period from May to December, but he assumes there were insurance company delays.

Chair Hoppock asked what happens at a final inspection. Mr. Rogers replied that in a situation like this, staff would be looking to make sure the foundation is filled in and there will not be any leftover hazards for people walking by, such as potentially falling into a foundation hole that never got filled in.

Chair Hoppock read the notice for ZBA 23-15. He asked to hear from the applicants. He asked if they are okay with a three-member Board, given that they have a right to five-member Board. The applicants replied yes, they would like to proceed.

Jeremy Chartier stated that he is the owner/founder of Resolve Ventures, LLC, a small real estate investment firm out of Milford. He continued that with him is Zach Jalbert, Acquisitions Specialist. They contacted the sellers, the Chabotts, in reference to the property. The Chabotts

were interested in selling, because they had attempted for sale by owner. They had signs up, which were not effective in marketing the property. Time crept up, which is why they came under contract with Resolve Ventures for the property. At this point, Resolve Ventures does not have firm plans for what to build on the property. They are requesting this extension to at least keep their options open, as to providing two housing units in the city versus just one.

Chair Hoppock asked what the cause of the fire was. Mr. Chartier replied that he does not know. He continued that his recollection is that they did not get a clear answer, because the fire damage skewed the whole situation. He continued that they could not find exact reasoning. The tenants were responsible, long-term tenants, and (the owners) never had a problem with them. This (fire) was something out of the blue. It might have been old wiring. It was an old building to begin with.

Chair Hoppock stated that his concern here is that the Ordinance says the cause of the damage cannot be by any means within the control of the owner. He continued that it is important to know that. He asked the applicants to speak to why they want an extension for a year.

Mr. Chartier stated that in order to get firm pricing on the construction costs, understanding what they are able to build on the property would be important, as is understanding what the footprint of the old property was. He continued that they spoke with Mr. Rogers several times about what that would have to look like in order to not further violate the setbacks. Right now, they do not have firm plans on what to build, or whether it would be a single-family or multi-family. Obviously, that determination is dependent upon this meeting.

Ms. Taylor stated that she knows it is difficult for them to speak on behalf of the Chabotts, since they are not here, but she would like to know why they did not have any plans. She asked if they started out not wanting to rebuild it.

Mr. Jalbert replied that when he spoke with the Chabotts, they were very upset that they lost the building. He continued that he believes it was one of the first buildings they owned and lived in, having grown up in the area and having lived here for a long time. When they lost it, they grieved, and did not realize that there was a one-year [deadline]. He does not think they ever knew there was a possibility of an extension, and never explored options, just because it was going to cost X amount of dollars during the situation they had lived through. Costs were quite inflated, in terms of constructing the building, and he thinks that was the main deterrent on top of simply having no idea of what they were going to do. They could not think of any good options, from what he was gathering from them. It was more exhausting than they had thought it would be, as far as finding a builder, having plans drawn up, and so on and so forth, and the cost of building was very restrictive at the time.

Ms. Taylor asked when they purchased the property. Mr. Chartier replied that they have not purchased the property yet; they are under agreement with the Chabotts to purchase it.

Mr. Gorman stated that he is interested in hearing from the public. He continued that beyond that, he thinks this is rather straightforward.

Chair Hoppock asked if the applicants had anything else to add. Mr. Chartier replied that they are looking to make this lot more appealing to look at than just an empty corner. He continued that they value the city's motif and how it looks, and hope to figure out a solution that keeps the lot looking like it fits in the area and will not be an eyesore with a big dirt lot. Resolve Ventures is here to help the Chabotts, because they did not have any ideas. Resolve Ventures is a solution to their problem that they could not think of how to build on.

Ms. Taylor asked what happens if Mr. Chartier and Mr. Jalbert cannot figured out, based on whatever research they need to do, how to build a two-family home there. Would they build a one-family home? Mr. Rogers replied that they should not get into this too much, because tonight the Board just has a straight up yes or no vote (on the one-year extension). He continued that they cannot put conditions on it. His opinion as the Zoning Administrator is that if an extension is granted for this, and they decide on their own to build a single-family home - because at this time, the Board cannot condition it - he would approve that, because it would mean taking a nonconformity and making it more conforming than it was (before the fire). He continued that if the Board does not find that there is enough reason to grant an extension, that is when a Variance would need to be obtained, because the extension for the non-conformities would go away on May 24.

Ms. Taylor replied that what she is asking is (what would happen) if an extension is granted, and they decide to build a single-family home on the same footprint, as opposed to a two-family. Mr. Rogers replied that he would issue a building permit for that, because it would be more conforming than the previous one was.

Chair Hoppock asked to hear from the public, beginning with people who are opposed to the request. He continued that afterwards, Mr. Chartier and Mr. Jalbert would have a chance to respond.

Mary Jane Doody of 185 South Lincoln St. stated that she is one of the abutters of this property. She continued that she has lived there 30 years and saw the property when it was changed over when Dan bought it for apartment use. Her concern is that she has a fence there, and even had to go to a lawyer once, to get Dan to fix the fence. It is a driveway to a driveway, and she put a fence in between and there is no room. If you think of four cars there, since there are two apartments, they could barely park, never mind get trash removal. The trash removal was on South Lincoln St., because there was no room on the side. She could understand perhaps one family living there, but there is no room for (more), no front yard, no side yards, no back yard. The biggest concern is that it is driveway to driveway. Small cars would be needed to go two by two. Otherwise, they drive in on South Lincoln St. and go out on Water St. That is when they go into the easements territory.

Chair Hoppock asked if Ms. Doody knows or heard what the cause of the fire was. Ms. Doody replied that she asked the firefighters, because one week it was Pearl St., the next week it was Elm St., and the week after that was South Lincoln St. She continued that all of them started on the porch, and she does not know what the final determination was, but they said it was a grill on the porch. Chair Hoppock asked if that would have likely been a tenant's grill. Ms. Doody replied that she is not sure.

Chair Hoppock asked if Ms. Doody had anything else to add. Ms. Doody replied that she has concerns about this, and has photos to show the Board if they want to see. Chair Hoppock replied that the Board's focus tonight is just whether to grant an extension, not (about what will be built), and they do not have any plans to look at.

Mr. Gorman asked how many years the property was used as a (two-family home). Ms. Doody replied at least as long as she has been there, and she has been there for about 30 years.

Mr. Rogers stated that he tried to look it up more on the Assessing database to get more information for the Board, but since the house was torn down, the Assessing database had been cleaned out a bit. He did not have time to go dig through the actual paper files.

John Eastman of 298 Water St. stated that there has always been a lot of traffic flow, because (the property in question) has a right-of-way to his driveway. He continued that he knows the focus tonight is not the building's size, but he wanted to point out that the driveway needs to remain open and that there are issues with parking behind the previous structure.

Mr. Rogers stated that he thinks he came across this and forgot to make note of it. He asked if Mr. Eastman's property has an easement across 193 South Lincoln St. for parking. Mr. Eastman replied that is correct. Mr. Rogers replied that the back part of the lot is encumbered with an easement of some sort, but he is not sure exactly how much.

Chair Hoppock asked Mr. Eastman if he heard from the firefighters, or anyone else, about the cause of the fire. Mr. Eastman replied no, but he called it in when the couch on the porch had ignited. Chair Hoppock asked if he is saying he saw it start. Mr. Eastman replied that he did not see it start, but saw and smelled smoke.

Jennifer Sizoo of Fairfield Court stated that she just arrived and missed what was said so far. She continued that she saw the smoke (when 193 South Lincoln St. was on fire). The house was torn down, and there was a footprint. She asked if it is correct that the person who purchases or owns the property has one year to put up a structure on that footprint the same as it was, two-family. Mr. Rogers replied that with non-conformities such as that, they are allowed one year to obtain a building permit. He continued that they can build in the same footprint, but do not have to. (Whatever is built) just cannot further violate the setbacks. It would be difficult for this one, given its location. It most likely would have to go close to the same footprint. If the extension were granted, if they had enough room to move it back and not

violate the back setback or move it to the right and not violate the side setback, they could. Given the pictures he has looked at, he thinks it would be difficult to do anything other than the same footprint as before. If the extension is not granted and the owners were to get a Variance to build a single-family home, or if the extension is granted and they decided to build a single-family home with a smaller footprint, that would be allowed.

Ms. Sizoo asked if something that gets built there can be any style the owner wants. She continued that the neighborhood is old. She asked if it has to be in the same style. Mr. Rogers replied that in some parts of the city, like towards downtown, they do have new form-based codes that apply and would dictate that a bit. However, not out into the residential zones, unless they are building a multi-family unit, which would have to go to the Planning Board. A one- or two-family dwelling would not (have its style) dictated by the City, as long as the Building Codes and Fire Codes are met.

Ms. Sizoo asked if there is a height restriction. She continued that the previous building had an attic. Mr. Rogers replied that there are standards and limitations on the number of stories and heights, and having a habitable attic is allowed as long as they have means of egress. He continued that the building that was there is probably about the maximum that could be built, staying within the heights. Ms. Sizoo asked if it is correct that it could not be three stories plus an attic. Mr. Rogers replied that is correct.

Chair Hoppock asked if Ms. Sizoo wanted to speak to the application at all. Ms. Sizoo replied that she does not oppose it. She thanked Mr. Rogers for answering her questions.

Chair Hoppock asked if anyone else wanted to speak in opposition. Hearing none, he asked if anyone wanted to speak in support. Hearing none, he asked if Mr. Chartier or Mr. Jalbert wanted to respond to the public input they heard. Mr. Chartier and Mr. Jalbert replied no.

Chair Hoppock closed the public hearing and asked the Board to discuss.

Mr. Gorman stated that his opinion is that granting the extension is reasonable. He continued that he does not think a year is an easy play when you are dealing with insurance companies, demolition, and now resale. He thinks the reason granting an extension is so loose is because it is just. He does not think there are many criteria hanging over it because it is something that is reasonable. He looks at the lot sizes surrounding this property, and sees .14, .09, .13, .11, where this one is .12. It is of like size to its immediate abutters. If the Board does not grant this extension, the applicants will come here for a Variance. They need to be able to use the property for something. He thinks at the end of the day, not granting the (extension) provides a more difficult path to the same outcome, where they are going to building something there. He hopes they will build something there, for the neighbors' sake and for the city's sake. His view is to grant the extension. He does not view a two-family as substantially different from a one-family. A four-bedroom, one-family home could have four or five cars, as could a two-family home. They will probably end up with the same number of sleeping rooms either way.

Ms. Taylor stated that one of the open questions, which they do not have a good answer to, is whether there was any cause of damage or destruction by the owners. She continued that however, since they also do not have any indication that it was not an accident or negligence, they can probably jump over that and say it was not an intentional fire. Mr. Gorman replied that if it was arson, they probably would know about it. Ms. Taylor replied yes, that is what she means.

Mr. Rogers stated that when the LDC changes occurred, that was one of the clarities they added to this Code. He continued that it was meant more for the (people who would say), "I'm just going to tear down this non-conforming structure use and just rebuild it right where it is at." The intent was to make clear that if you are going to *intentionally* tear something down, it should be put back to meet the Zoning Code. He does not think anyone intentionally set this fire and displaced anyone.

Ms. Taylor stated that she tends to agree with Mr. Gorman that if it is not an intentional destruction, it is probably reasonable, considering the circumstances of the owners not being local anymore and having to deal with the property and insurance issues. She thinks it is reasonable to grant a one-year extension. A remaining question she has for Mr. Rogers is what happens if they do not come in and apply for a building permit within that one year, and whether it is limited to just one extension. Mr. Rogers replied yes, that is how he would take this to read. You get one shot at it, and the building permit has to be actually issued. They could not apply for a building permit on the 364<sup>th</sup> day. They have to give staff plans, and staff has to have time to review it to make sure it is not more non-conforming than the previous structure. Lead time is needed with the LDC specifically says, "*granted a building permit.*"

Chair Hoppock replied that it says, "*If a building permit is not obtained within the year period.*" Mr. Rogers replied that the way it reads, he interprets it as a one year, one shot deal. Ms. Taylor replied that that was her understanding, too, but she wanted to make sure.

Chair Hoppock stated that he agrees with the other Board members. He continued that the loss was on May 24, 2022, and the demolition was not completed until December 2022, and the City's final inspection was just a few months ago in February. He asked if it is correct that that is when the City cleared the property for whatever was going to happen next. Mr. Rogers replied that the final inspection was just to make sure there were no hazards left by the demolition, that all the materials were taken off, holes filled in, and so on and so forth. Chair Hoppock asked if the owners could have started rebuilding prior to that final inspection. Mr. Rogers replied no, they would not have been able to rebuild, but they possibly could have applied for a building permit and staff could have reviewed and possibly issued it. However, again, part of the applicant's reasoning is the current property owner just was not sure what to do, and until the applicants came before the Board tonight there had been no real direction for this property.



Chair Hoppock replied that at the same time, the insurance company poking around in there all that time, the price of construction material, and the availability of professional contractors, all lead to the conclusion that a year is probably not enough time to have this all done and conforming. He continued that his test, even though the Ordinance does not provide one, is: what is fair, under the circumstances? That is an elastic test, but given the circumstances the Board members just articulated, he agrees that it should be extended. It is fundamentally fair. What happens within the year is something that is too soon to tell.

Mr. Gorman made a motion to approve ZBA 23-15 for a one-year extension from May 24, 2023, for the non-conforming use. Chair Hoppock seconded the motion, which passed with a unanimous vote of 3-0.

Mr. Rogers stated that he appreciates everyone coming out, and he appreciates the applicants going through this. He continued that as he stated at the beginning, they were not sure, but held this to a little higher standard, hence the abutter notification. He also thinks it is a good opportunity at this point in time, if Mr. Chartier and Mr. Zalbert buy and develop the property, for the neighbors have a face to the people developing it. Hopefully that will start a good relationship moving forward.

**V) New Business**

Chair Hoppock asked if there was any new business. Mr. Rogers replied no.

**VI) Communications and Miscellaneous**

**VII) Non-Public Session (if required)**

**VIII) Adjournment**

There being no further business, Chair Hoppock adjourned the meeting at 7:08 PM.

Respectfully submitted by,  
Britta Reida, Minute Taker

Reviewed and edited by,  
Corinne Marcou, Zoning Clerk