

**Town of Milford
Zoning Board of Adjustment Minutes
December 16, 2010
Marc Blondeau/Barbara Philipsen
Case #35-10
Variance**

Present: Kevin Johnson, Vice Chairman
Fletcher Seagroves
Laura Horning
Steve Winder
Zach Tripp, Alternate

Michael Unsworth - Alternate

Absent: Katherine Bauer – Board of Selectmen’s representative
Steven Bonczar - Chairman

Secretary: Kathryn Parenti

The applicant, Marc Blondeau, along with Barbara Philipsen, owner of 361 Ponemah Hill Road, Map 53, Lot 30 in the Residence “R” district, is requesting a Variance from Article V, Section 5.04.4:A to permit the creation of a new lot with less than two hundred (200) feet of frontage on a Class V or better road.

Motion to Approve: _____

Seconded: _____

Signed: _____

Date: _____

Kevin Johnson, Vice Chairman, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinances and the applicable New Hampshire statutes. He continued by informing all of the procedures of the Board; he then introduced the Board. He read the notice of hearing into the record as well as the list of abutters; Marc Blondeau, applicant and Barbara Philipsen, owner of 361 Ponemah Hill Road, were present. He then invited the applicant forward to present his case.

M. Blondeau stated he would like to separate the property into two (2) parts – one would have the existing house, would be 2.4 acres with 200 feet of frontage and the other would be 2 acres with approximately 157 feet of frontage.

K. Johnson asked why the applicant wanted to divide the lot.

M. Blondeau replied he wanted to live in the existing house and eventually build a house for his brother on the other lot.

Z. Tripp asked about the driveway that was shown on the plan.

M. Blondeau replied it was still there.

Z. Tripp asked if there was currently a house on the other lot next to this one, map 53, lot 30-2.

M. Blondeau replied there is one being constructed on that lot now.

Z. Tripp asked if the applicant will be using the pre-existing driveway.

M. Blondeau replied the lot next door was sharing it.

K. Johnson opened the meeting to public comment; there was none so he closed that portion of the meeting and asked the applicant to go through the criteria for a variance.

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

M. Blondeau stated the lot would still be in accordance with the residence “R” district requirements.

2. The use is not contrary to the spirit of the ordinance because:

M. Blondeau replied the new lot would have met the zoning ordinance minimum frontage requirements as accepted prior to 2001.

3. Granting the variance would do substantial justice because:

M. Blondeau stated it would keep it residential and the land conceptual.

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

M. Blondeau stated it would be consistent with neighboring lots.

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:

M. Blondeau state it without a variance the properties separated would be rendered useless.

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

M. Blondeau replied it creates a new residential lot which is consistent with lots in the immediate area. The intention with a separated lot would be to build a single family dwelling for my brother and his family within the next five (5) years.

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 distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance. A variance is therefore necessary to enable a reasonable use of the property because:

M. Blondeau stated the physical circumstances of the current lot to separate evenly for the frontage requirement would fall short while maintaining the minimum lot size and support reasonable use with adequate and safe access.

K. Johnson asked the board if they had any additional questions or comments; they did not so they proceeded to discuss the criteria for a variance.

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

S. Winder felt granting the variance would not be contrary to the public interest as that he didn't see how the small reduction in frontage would make a big difference.

F. Seagroves agreed; the reduced frontage would not change the character of the neighborhood or be a threat to the health, welfare and general safety of the public.

Z. Tripp agreed and read from page II-9 of the The Board of Adjustment in New Hampshire – A Handbook for Local Officials: *“For the variance to be contrary to the public interest, it must unduly and to a marked degree violate the basic zoning objectives of the zoning ordinance.”* He felt the reduced frontage wouldn't change the character of the ordinance.

L. Horning felt granting the variance would not be contrary to the public interest as there would be no bearing on the health, welfare or safety of the general public and it would not alter the general character of the neighborhood.

K. Johnson agreed; there would be no marked change on the character of the neighborhood. There are other properties in the neighborhood of similar size and with similar frontages.

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

F. Seagroves read from page II-9 of the The Board of Adjustment in New Hampshire – A Handbook for Local Officials: *“...does the variance alter the essential character of the neighborhood or threaten the health, safety or general welfare of the public?”* He didn't think the reduced frontage would violate the spirit of the ordinance.

S. Winder agreed. The applicant met part of the criteria with the size of the new lots – one is a little over two (2) acres and the other is two (2) acres. The lots are not unusually shaped and the reduced frontage is only by 43 feet.

Z. Tripp agreed; the applicant is sensitive to the rural nature of the district and the addition of one (1) new house on four (4) acres would not change the rural character of the area.

L. Horning agreed with all of the previous comments.

K. Johnson agreed. The intent of the ordinance is to provide for low-density residential and agricultural land uses that are sensitive to the rural character and environmental constraints that exist in the district. The minimum required frontage of 200 feet is to allow access for emergency vehicles and considering the lot sizes in the neighborhood, it does not violate the intent of the ordinance to provide safe access to the property.

3. Would granting the variance do substantial justice?

Z. Tripp felt there would be no gain to the public if this request was denied; granting the variance would do substantial justice.

F. Seagroves agreed; he read from The Handbook: *“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.”*

S. Winder agreed; there would be no public gain if this was denied.

L. Horning agreed.

K. Johnson agreed; there would be no gain to the public if this was denied and a clear gain to the individual if it was granted.

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

S. Winder stated the variance could be granted without diminishing the value of abutting property. The parcel in question is set up to be divided into buildable lots. No abutters were present to challenge this or voice their concerns.

L. Horning stated there would be no diminution of property values. She felt they may actually increase.

Z. Tripp and F. Seagroves agreed.

K. Johnson agreed; by dividing the larger lot into two (2) smaller lots would be similar to the adjoining properties in the neighborhood.

5. 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;
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.

ii. The proposed use is a reasonable one.

F. Seagroves stated there is a hardship if this request was denied. There is not much they can do with the property as it exists. The reduction in frontage is only 43 feet and sticking to the ordinance would be a hardship. He could not see where the property could be reasonably used unless the variance is granted.

S. Winder agreed; reduced frontage exists in town and denial of this request would be an unnecessary hardship.

Z. Tripp agreed; granting the variance would not go against the general public purposes of the ordinance. It is a two (2) acre lot and only one (1) additional house is going in. He read from page II-11 of the Handbook: *“The restrictions on one parcel are balanced by similar restrictions on other parcels in the same zone.”* There are several parcels in the neighborhood with less than the required frontage. He felt the applicant was making a reasonable request.

L. Horning agreed with Z. Tripp; a hardship would exist as stated by the comments made by the board.

K. Johnson agreed the use was a reasonable one but he felt there was nothing unique about the property as it is. As it exists, the property has the minimum required frontage of 200 feet. The fact that the parcel is large at four (4) acres and that doesn't make it unique enough to meet the hardship requirement.

K. Johnson asked if there were any additional comments; there were none so he stated after reviewing the petition and after hearing all of the evidence and by taking into consideration the personal knowledge of the property in question, he called for a vote.

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

F. Seagroves – yes L. Horning – yes S. Winder – yes Z. Tripp – yes

K. Johnson – yes

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

L. Horning – yes S. Winder – yes Z. Tripp – yes F. Seagroves – yes

K. Johnson – yes

3. Would granting the variance do substantial justice?

S. Winder – yes F. Seagroves – yes L. Horning – yes Z. Tripp – yes

K. Johnson – yes

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

F. Seagroves – yes L. Horning – yes S. Winder – yes Z. Tripp – yes
K. Johnson – yes

5. 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.

Z. Tripp – yes S. Winder – yes F. Seagroves – yes L. Horning – yes
K. Johnson – no

K. Johnson asked if there was a motion to approve case # 35-10, a request for a variance.

S. Winder made the motion to approve Case #35-10, with the above mentioned condition.

L. Horning seconded the motion.

Final Vote

L. Horning – yes Z. Tripp – yes S. Winder – yes F. Seagroves – yes
K. Johnson – no

K. Johnson reminded the applicant of the thirty (30) day appeal period.