Town of Milford
Zoning Board of Adjustment Minutes
November 3, 2011
Case #19-11
Leroy Barr
Variance

Kevin Johnson, Chairman
Laura Horning
Fletcher Seagroves
Zach Tripp, Alternate

Absent: Steve Bonczar
Steve Winder

Secretary: Peg Ouellette

The applicant, Leroy Barr, owner of 247 Mile Slip Road, Map 50, Lot 1 in the Residence "R" District, is requesting a Variance from Article V, Section 5.04.4:B to create an additional residential living unit with less than the required 300 ft of frontage on a Class V or better road.

MINUTES FOR CASE #19-11 AT THE NOVEMBER 3, 2011 MEETING WERE APPROVED ON JAN 19, 2012.

Kevin Johnson, 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.

K. Johnson stated that the applicant has three cases before the Board this evening, a variance and two special exceptions. He stated the Board has questions for the applicant before proceeding. 1. It appears that all three applications deal with the same intent to create an ADU. Is that correct?

The applicant said that is correct. His recently married daughter and son-in-law will be living in his home temporarily and they have decided to create an additional dwelling unit within the house. When his daughter leaves, it is possible that his father and stepmother will move into the new space, so it will likely be family members living there in the future. He has made three applications and the Additional Dwelling Unit (ADU) was the option he thought most feasible but it has limitations, one being 700SF. He has slightly more space than 700SF and was advised to apply for the two-family dwelling to start since that would release him from the square footage limit of the ADU. That is the reason for making the cases in their present order. He would like to have the application for a two-family dwelling considered first and if that isn't approved then go on to the ADU.

K. Johnson stated that in a similar case before the ZBA where, because of the configuration of the home ,it would not have been possible to create any logical subdivided space within the 700SF and in that case the attorneys' opinions were that they needed to request a variance for a non-standard use; because of the nature of the construction, it would not have been a two-family home. This case appears identical to that one in which the variance for 300 feet (frontage) and the special exception for a two-family dwelling would not be the correct applications because they are not creating a two-family dwelling by dividing the space. He asked Bill Parker, Town of Milford Community Development Director/Zoning Administrator, to comment.

B. Parker said by nature of zoning ordinance and building codes there is the ability to either do the ADU for 700SF or less, or for anything above that, incorporating that into an existing house or two units next to each other is considered a duplex or two-family dwelling. So the previous case being referred to has similarities. It was the Mason Road case where the lot was not large enough for a two-family dwelling so a variance was needed. This evening's case is similar. The lot is large enough but there is not enough frontage because it was created prior to the zoning change, but it is the same sort of basic criteria.

K. Johnson addressed the applicant asking to clarify that the applicant would prefer the variance from the footage requirement for a two-family dwelling and a special exception to allow a two-family dwelling on the lot, rather than an ADU.

L. Barr said that is where he would like to start.

There was discussion as to which case should be considered first. It was determined that the variance should be taken up first.

K. Johnson informed applicant that there are only four Board members present and he has the right to be heard by a full five-member Board. He may choose to be heard by the four-member Board; three affirmative votes are required for approval. He can request his case to be tabled to the next scheduled meeting. If he would like to be heard by the four-member Board he must sign a waiver. The applicant signed the waiver.

K. Johnson read the Notice of Hearing into the record as well as the list of abutters; Leroy Barr, applicant and owner of 247 Mile Slip Rd was present. Bill Parker was present on behalf of Town of Milford.

K. Johnson asked the applicant to present his case.

L. Barr stated he is on a shared driveway and he approached the neighbors directly affected. He had a letter from them showing they are not opposed.

Z. Tripp asked applicant to clarify which adjacent lot it is, which he did.

L. Barr said the intent is to turn their basement into an ADU or two-family dwelling, whichever is allowed. Their shared driveway is more than adequate, as it is bigger than code.
K. Johnson asked the Board for any questions.
Z. Tripp asked if it was currently not in conformance for either a single-family or two-family. K. Johnson said that is correct. L. Horning had none. F. Seagroves had none.
K. Johnson asked for public comment. There were none, so he closed the public portion of the meeting and read into the record a letter from one of the abutters to the Town of Milford Zoning Board, 1 Union Square, Milford NH 03055 Dated Nov. 3, 2011. Re Leroy Barr's variance: "Leroy Barr has come to both Jobe and Mamie Miles who own Lot 50-1-5 which is beside his property. He asked if we would have a problem with him putting an apartment in the basement of his home which we share a common driveway with. We would like the Board to know that we as Leroy's neighbors have no problem with him putting in an apartment. Signed Jobe and Mamie Miles, 245 Mile Slip Road, Milford, NH 03055."
K. Johnson also read into the record additional comments from the Code Enforcement Officer: "The Barr's property Lot 50-1 was created in 1999 at which time the Town's subdivision regulations and zoning ordinance allowed the subdivision of back lots as long as each lot consisted of a minimum of 5 acres and limited to two lots sharing a private way. The private way (shared, common driveway) had to allow at least 25' of frontage for each back lot. This regulation was removed by Town vote in 2000, thus the Barr's property is considered legal/non-conforming to current zoning. The Barr's are seeking a variance to be allowed a two-family dwelling on a lot with less than the required 300' of frontage for a two-family. As stated in the application, the shared driveway is built in excess of customary driveway standards. In the Residence "R" zone: 2 family residences require 4 acre minimum/300' frontage Barr property is 66.5 acres with 25' frontage." K. Johnson stated that 25' frontage is what makes it non-conforming.
K. Johnson asked for any additional questions from the Board. There were none, so he asked the applicant to read his application into the record.

1. **Granting the variance would not be contrary to the public interest because:**
   The house sets back off the road (Mile Slip) and is not visible from the road.
2. **The use is not contrary to the spirit of the ordinance because:**
   Although there is not 300ft of frontage there is ample room around the house and back yard for additional people (65) acres.
3. **Granting the variance would do substantial justice because:**
   Would add quantity and variety to the available rental space in Milford making more affordable space available.
4. **The proposed use would not diminish surrounding property values:**
   The house is large enough to entirely incorporate the second dwelling unit without any additions to the outside of the property, the lots are configured so that the parking, and yards are not visible to each other.
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 because
   Ample room exists for the operation of a second dwelling in and around the house, seems a reasonable substitute for the300ft frontage.
   ii. and; The proposed use is a reasonable one because:
   Other multiple family structures exist on Mile Slip Rd with little or no impact on the quality of life in the neighborhood.

(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:

We believe that the configuration of our lot is such that the purpose of the ordinance can be met with substituted space. Our private way is much wider than code. (L. Barr stated that when the lot was configured zoning ordinances existed. In 2001 it went from 235ft to 300ft frontage. He said he spoke with Bill Parker from theTown and was told that at the time it was done to move growth to more rural parts of town and changing from two to four acres would accomplish that. So the 2001 change got rid of shared driveways in addition to the frontage change which put the lot into a non-conforming category. He said he didn't believe a variance from 300ft frontage would violate the spirit of the ordinance because of the additional space).

K. Johnson said that this case and the previous variance case share common features. If the existing home was not there, Mr. Barr would still be before the Board on this question; the way the lot is configured there is not have 200ft required for access. When this lot was created it was done with a certain amount of access to the road and that is what the property owner must deal with and that is what the Board considers as they discuss the criteria for the property.)

L. Horning asked the applicant what type of surface is on the driveway and how wide the right of way is.

L. Barr responded that there is 50ft of frontage off Mile Slip Road – fifty feet wide up to where it separates to their home and the neighbors' home, where it narrows a bit. The road is gravel. They have lived there 9 years and will have to add gravel this year for the first time in 9 years.

L. Horning said concern is addressing the health, general welfare and public safety, being sure that emergency vehicles have adequate access in and out.

K. Johnson stated by way of clarification that the Barr property only has 25 ft of access off Mile Slip Road, the other 25 ft being from Lot 51-1-5. They share a common portion of that drive, so the nature of the property makes it non-conforming under any review of the ordinance.

L. Barr stated that they have had three instances of ambulance and fire trucks to serve both lots without problems.

K. Johnson stated they are dealing with frontage requirements in a Residential "R" District and a variance. The applicable ordinances and statutes as follows:

The Town of Milford Zoning Ordinance Article V, Section 5.04.4 Lot Sizes and Frontages: *A. The minimum lot size and frontage for a single-family dwelling or a single-family manufactured housing unit and all other permitted uses, unless stated otherwise, in the residence "R" District shall be two (2) acres (87,120SF), or greater, depending on soil and slope conditions, with a minimum two hundred (200) feet of frontage on a Class V or better road.*

Town of Milford Zoning Ordinance Article X Section 10.0.1 Variances which is the administrative portion dealing with how applications are made, and Town of Milford Zoning Ordinance Article X, Section 10.01.2 : *Every variance granted by the Board of Adjustment shall be based upon and accompanied by a specific finding or findings that:*

A. there are special circumstances or conditions applying to the land or structure for which the variance is sought (such as, but not limited to, the exceptional narrowness, shallowness, or shape of the property in question, or exceptional topographical conditions), which are peculiar to such land or structure, and the application of the requirements of this Ordinance will deprive an owner of such property a reasonable use of it, and will impose upon such owner a hardship not shared by the owners of other property in the same district. B. The specific variance as granted is the minimum variance that will grant

reasonable relief to the owner and is necessary for a reasonable use of the land or structure. C. The granting of the variance will be in harmony with the general purposes and intent of this Ordinance, and with the convenience, welfare and character of the district within which it is proposed, and will not be injurious or otherwise detrimental to the public welfare.

Variances must meet five criteria as specified by the State of New Hampshire RSA 674:33 Section IB: (*1) Variance will not be contrary to the public interest. (2) The spirit of the Ordinance is observed. (3) Substantial justice is done. (4) The values of surrounding properties are not diminished. (5) Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship. (A) For purposes of this subparagraph, "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; and (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.*

The definition of "unnecessary hardship" set forth in subparagraph (5) shall apply whether the provision is the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

The Board proceeded to discuss the five criteria for granting a variance.

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

F. Seagroves said yes, just considering the frontage.

Z. Tripp said with regard to the frontage it is in the public interest.

L. Horning said it can be built without diminishing value of abutting property.

K. Johnson agreed saying these are all large rural properties with low housing density, this is an existing property and no additional access is being added, and this variance is pro forma because of changes in the ordinance.

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

F. Seagroves said yes and that he didn't see any adverse effect to the public interest and the house and road are already there and have been for years.

L. Horning said she did not see it being contrary to public interest; there is adequate road access to the property and she didn't see the public gain by not granting this variance.

Z. Tripp agreed it will not be contrary to the public interest; one of the criteria is whether the variance will alter the essential character of the neighborhood and he did not believe it will change the character of the neighborhood, since it is pre-existing.

K. Johnson agreed for the same reasons as stated by Z. Tripp.

3. Would denial of the variance cause unnecessary hardship taking the following into consideration: 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; and ii. The proposed use is a reasonable one.

F. Seagroves said the proposed use is a reasonable one and he didn't see anything against the public interest; applicant is looking for an additional residential living unit that will not change the outside of the structure and it would be a hardship if he couldn't do it.

Z. Tripp said regarding no substantial relationship, he believed it could be granted; can relief be granted without pressuring the purpose of the ordinance and, whether discussion is 200ft for single-family or 300ft for two-family, those were set up more for new developments and new lots- and this is a pre-existing lot that met the ordinance at that time. With regard to proposed use being a reasonable one, he said it is.

L. Horning said she believed denial of the variance would result in unnecessary hardship for the applicant in that it would severely hinder his ability to use his lot; there is a substantial acreage, it is in a precarious position which lends itself to being unique. So she believed no substantial relationship exists between the general purposes of the ordinance as stated by Z. Tripp to stretch out density from the village area to more rural portions. And the proposed use is a reasonable one; this is a residential area and a residential use. Denial would result in unnecessary hardship to the applicant.

K. Johnson agreed denial would result in unnecessary hardship. Going back to the Town Ordinance Section 10.01.2 Paragraph A, "there are special circumstances or conditions applying to the land for which the variance is sought, such as but not limited to, exceptional narrowness, shallowness or the shape of the property in question." He stated this property with its shape in question is defined by that paragraph, being a very large property with very small access to a Class V or better road. This property is the one that defines the need for this variance and he felt it would definitely be an unnecessary hardship to deny the variance.

4. Would granting the variance do substantial justice?

F. Seagroves said yes. The loss to the individual is not outweighed by the gain to the general public and he did not see the public will gain by a refusal.

L. Horning agreed. Once the criteria of the hardship test has been met, this part of the testing process is inevitable. Granting the variance would do substantial justice to the applicant and would not do injustice to the public.

Z. Tripp agreed with other Board members that he did not see gain by the public.

K. Johnson agreed granting the variance would do substantial justice and denying it would injure the applicant with no gain to the public.

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

F. Seagroves said yes. Looking at the intent, this will maintain the intent of low density for residential; with 66 acres it will still be agricultural land.

Z. Tripp agreed the variance can be granted without violating the intent of the ordinance; when the parcel was created it did conform to the ordinance at that time.

L. Horning agreed.

K. Johnson agreed the variance could be granted without violating the spirit of the ordinance.

K. Johnson read the last criteria under 10.01.B: **The specific variance as granted is the minimum variance that will grant reasonable relief to the owner and is necessary for a reasonable use of the land or structure.**

F. Seagroves said yes.

Z. Tripp said yes.

L. Horning said yes.

K. Johnson agreed the variance is necessary for reasonable use of the land.

K. Johnson said after reviewing the petition and hearing all of the evidence and taking into consideration the personal knowledge of the property in question, this Board of Adjustment member has determined the following findings of fact.

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

F. Seagroves said yes.

L. Horning said yes.

Z. Tripp said yes.

K. Johnson said yes.

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

F. Seagroves – yes

L. Horning – yes

Z. Tripp – yes
K. Johnson – yes

3. Would denial of the variance result in unnecessary hardship taking the following into consideration: no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of the provision to the property; and, the proposed use is a reasonable one.

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

4. Granting the variance would do substantial justice.

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

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

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

The Chairman asked for a motion to approve.
L. Horning made a motion to approve Case 19-11.
Z. Tripp seconded the motion.

Final Vote:

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

Case #19-11 for a variance was approved by unanimous vote.
K. Johnson reminded the applicant of the 30-day appeal period.