Town of Milford
Zoning Board of Adjustment Minutes
March 21, 2013
Mark and Brian Danforth
Case #2013-03
Variance

Present: Fletcher Seagroves, Vice Chairman
Zachary Tripp
Kevin Taylor
Laura Horning
Bob Pichette

Mike Thornton, Alternate

Secretary: Peg Ouellette

The applicants, Mark and Brian Danforth, owners of Map 6, Lot 12, 843 North River Road in the Residence "R" district, are requesting a Variance from Article V, Section 5.04.4:A for the creation of a lot with .60 acres where 2 acres are required.

Motion to Approve: April 18, 2013

Fletcher Seagroves, as Chairman, opened the meeting stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. He informed all of the procedures of the Board.
Brian Danforth and Mark Danforth, applicants, were present. F. Seagroves read the notice of hearing into the record. This case was tabled from the February 21 and March 7, 2013 meetings.
F. Seagroves asked the applicants to come forward.
M. Danforth explained that they wanted to take a lot of 2.6 acres and split it into one lot of 2 acres and one non-conforming lot of .60 acres
The list of abutters was read. A representative for 37 Wilton Road Milford LLC, an abutter, was present.
K. Taylor asked about the area of the slope at the back of the property.
M. Danforth responded that it started with nothing and goes up from there. A percentage goes all the way to the back of the lot.
K. Taylor asked whether that is part of the total two acres.
M. Danforth replied it was and it owns the whole slope right down to North River Rd.
K. Taylor asked what the percentage is slope.
M. Danforth said it is pretty much all slope from the new line it would make all the way to the back but you would make a flat area and have the same slope in the back yard versus having it slope all the way to the front.
Z. Tripp asked whether the picture shows the proposed dividing line.
M. Danforth said it would be further back on the slope. He would be going back and creating about a twenty-foot slope but could stabilize that .
Z. Tripp said he just couldn't tell where the dividing line.
L. Horning asked who told him not to go into detail.
M. Danforth said there is no sense in spending money on a survey because the stuff is already done. They didn't take a percentage of the slope; the whole lot is sloped.
L. Horning said she is familiar with the lot.
F. Seagroves asked him to read the application into the record.
B. Danforth read the application:
Section I – Application for Variance
A variance is requested from Article V, Section 5.004.4A of the Zoning Ordinance to permit: A subdivision of a 2.6 acre lot into a .60 acre lot and a 2.0 acre lot. The .60 acre lot requires a variance on lot size in a Residential "R" district. This .60 acre lot contains an existing house which will be hooked to town sewer.
1. Granting the Variance would not be contrary to the public interest because: The .60 acre lot has an existing single family home that is similar in size and age to many in the neighborhood.
The .60 acre lot is reasonable for existing home. There will be no negative impact on public interest.
2. If the Variance were granted, the spirit of the ordinance would be observed because:
Single family homes would be in keeping with the ordinance Residential "R" District.
3. Granting the Variance would do substantial justice because: The existing home is on the far westerly end of the site and because of the irregular shape and double frontage, there will be no injustice to the public resulting from the variance.
4. Granting the Variance would not diminish the value of surrounding properties because:
In addition to improving the existing home on proposed .60 acre lot, a new home on the 2.0 acre lot will further add value and improve the neighborhood.
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 unnecessary hardship because:
i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specif application of that provision to the property because:

The layout of Falcon Ridge created a wide 2.6 acres parcel (lot 6/12) with a large amount of frontage on two sides. Allowing the subdivision allows this single family home and would be fair and compatible with the neighborhood intended by the "R" zoning.

And;

ii. The proposed use is a reasonable one because: Both lots will remain single family homes, both with 200 ft. frontages on an irregular shaped lot.

B. Explain how, if the criteria in Paragraph 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 development of Falcon Ridge created the irregular shaped lot (6/12). Where the existing home is situated on the lot (westerly side) makes it reasonable in creating one non-conforming lot (.60 acre) and one conforming lot (2 acres).

F. Seagroves inquired about the layout of Falcon Ridge creating a wide parcel.

M. Danforth said when Falcon Ridge was created, they made the lot smaller, longer and narrower and gave frontage on Falcon Ridge and North River Rd.

Z. Tripp commented that the lot was already somewhat narrow running east and west, it just became narrower.

M. Danforth agreed and said that they added the road to it.

F. Seagroves said it was stated that Falcon Ridge created it. Did the applicants give them the right of way to do that? Did the Danforths own the property at that time?

M. Danforth said no; he assumed the previous owners allowed it.

F. Seagroves had thought this happened with the applicants' permission.

M. Danforth said the previous owner owned all of it and she kept giving herself some and taking things away. Then the applicants purchased the lot.

L. Horning asked how much the road encroached into the lot.

M. Danforth sated 50 feet right of way, probably 80 ft. on the top corner and 40 ft. on the bottom corner.

L. Horning asked if they purchased the lot after this was done, or did they purchase it knowing the road was there.

M. Danforth said yes.

L. Horning said they knew the condition of the lot.

M. Danforth said yes.

F. Seagroves said the application stated the lot would be hooked up to town sewage.

M. Danforth stated the studs are there, but they are not currently hooked up. When the did Falcon Ridge they were put in.

B. Pichette asked about a sheet that was not in the packet.

M. Danforth said those were notes he had put together.

B. Pichette said he underlined part of it, stating the house already has town sewer. But the application states they will be putting it in.

M. Danforth stated those were notes he made and took out what he needed to prepare the application. Neither of them has town sewer.

L. Horning asked if they planned to put another residence on the other lot.

M. Danforth said he intends to put a house in the two acre lot. The bottom lot has a house on it, and he wants to put a house on the two acre lot.

L. Horning asked where the second house will be.

M. Danforth said if you go up Falcon Ridge, at the end of the guard rail there is a meter – right at that corner.

L. Horning commented on the strange topography.

Z. Tripp asked about the condition of the current home and whether it is occupied.

M. Danforth said nobody is living there.
Z. Tripp asked about the condition now.
M. Danforth said right now they are remodeling it.
Z. Tripp said they are remodeling with the intent to fill it.
M. Danforth said that was correct. He said the terrain is steep but he can level off an area and make the same slope in the back yard.
B. Danforth said there is enough area there, with a little bit of dirt..
L. Horning asked if they would be able to meet setbacks, etc.
M. Danforth responded yes. He stated when the road was put in, about 10,000 yards was probably moved and the spoils part put in back. He might need to take out about 300 yards to make a house lot.
B. Danforth said it is doable with the slopes.
M. Danforth said yes, with the setbacks of the street; town sewer is required, as well, and underground utilities. They are right there.
There being no further questions from the Board, the Chair opened the meeting up to public comment.
Attorney Andrew Prolman of the office of Prunier & Prolman in Nashua came forward. He represents the abutter across the street, Pine Valley Mill project which is coming into fruition in the next few months, and they have asked him to come and state that they have no objection to this variance. They looked at the plan and discussed it after the last meeting. It appears to be a pretty good variance for the small lot with ample room on the two acre lot. They have no objection
Kathy Bauer of 247 N. River Rd. spoke. She said the Board will go into the intent (of the ordinance). The Residential "R" District intent is low density. She didn't see reason for hardship. As it exists, if she owned it, she would like to keep it as it is. There is the level area on the west end of the lot which has the house on it. The topography is extreme. Maybe there is a small area there. She asked the applicants how long the driveway will have to be to get to area on which they propose to build.
M. Danforth said about 50 ft. It drops off the street level. The minimum setback is 30 feet; it is just over 30 ft.
K. Bauer said she can't come up with any reason why there would be hardship or public interest. It doesn't meet any of the conditions.
Chris Constantino of 721 N. River Rd. then spoke. She didn't understand hardship that much but it appears the owners bought the property knowing that in the existing ordinance it was rural. She lives fairly close to this corner. It needs to stay as a rural lot. She didn't understand what the hardship would be. To create a half acre lot because two houses next to it are close together doesn't justify adding another like that. Falcon Ridge is a separate subdivision and was done with an open space subdivision plan so the house lots are closer together; but the compensation was the large amount of open space that was left. That is not being met by this proposal. Not speaking as a member of the Conservation Commission, although she is on the Commission, they are often confronted with homeowners who come to the commission after purchasing a property wanting to do something to make the property more liveable, that's buildable but cost-effective and functional. It is hard to regulate a liveable lot, which is different in each person's mind. But they often have people coming in asking to put in a pool or shed. The size of this lot will limit any future use. Not to do hardship on a new homeowner. This is the sort of lot that would be appropriate for a new homeowner who may not understand the consequences of a small house lot like this that has steep slopes.
M. Danforth said he was using his example for a variance for the first lot. They allowed a variance for the first lot which was in compliance. So, in 2006. Yes, they did buy it knowing it was set up that way. They didn't have time to come before the Board in that short period of time.
F. Seagroves closed the public portion of the meeting. He opened the meeting for any further questions from the Board. There were none. He then proceeded to the deliberations regarding the criteria.

Can the Variance be granted without diminishing the value of the abutting properties?

L. Horning said it could be granted without diminishing the value of the abutting properties. This is a neighborhood property in a residential district. There are residences all around it. The development behind it is a prime example and other developments up South River Rd. She did believe it could be granted without diminishing the value of abutting properties.
K. Taylor said it could be granted without diminishing value of abutters; property. There are houses in the back with Falcon Ridge and houses going up that side of N. River Rd. Now there is a condo complex going in.
Z. Tripp agreed. The proposed .6 acre lot shows required road frontage for Residential A. It is a single-family home. Applicant testified the house is gutted and being hooked up to sewer.
He didn't believe there would be any impact on surrounding properties.
B. Pichette agreed and said they plan on moving into the house on the .6 acre and a new owner will be going in on the two acre lot. So there will be no diminishing of the surrounding property.
F. Seagroves agreed. He didn't think the abutters' properties will lose value.
Would granting the variance not be contrary to public interest?
B. Pichette said it would not be contrary to public interest. There would be no harm to the public interest. in his opinion, in that area. the .6 acre lot is a reasonable size lot for the existing single-family home.
Z. Tripp said yes, he thought the variance could be granted without being contrary to public interest. There is no harm to public health, safety or welfare. Required frontage will still be present. It will still be a single-family home. He didn't believe it would not alter the character of the neighborhood because from the street it will have required frontage and will look like the same neighborhood. The two acre lot and new house will be on top of the hill and probably will not be all that visible from the street. He believed it would not be contrary to the public interest.
K. Taylor said he didn't think it is contrary to the public interest. They are fixing up the older house to be more presentable and the house on the hill, probably not many people will see it.
L Horning agreed with Board members. She didn't believe there would be anything contrary to the public interest in subdividing and the existing house on a .6 acre lot would not be contrary to the public interest. It would not cause any marked violation of the zoning ordinance regarding this particular question.
F. Seagroves agreed. He didn't see it contrary to public interest. Gain is more by the Board reviewing it.
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 provisions 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.
Z. Tripp said regarding reasonable use, he was on the fence . He had written in his notes "maybe." Dividing into two lots is a reasonable request. It is still keeping it a single family home and still has required frontage. That is a reasonable way to subdivide. It will not alter the character of the neighborhood. When talking about the spirit of the ordinance, he will discuss how rural this area is. While he struggled with it, he looked at the zoning ordinance itself re uses of property. He didn't know if that intersects with reasonable use. Regarding fair and substantial relationship, the Handbook points out that all ordinances are a hardship on all landowners in town but are applied equally to all with no hardship. He looked at the size and the lots surrounding the parcel. 3 Maple Street, the lot to the west, is .82 acres. To the west of that is open space in Falcon Ridge which is about a half acre. To the neighborhood that appears to be one lot. On the east, the Town of Milford owns 25 acres. 803 N. River Rd is 25 acres. 793 N. River Rd. is l.4; 785 is 1.6; 779 is 6 acres. Not all surrounding properties have a full two acres. This .6 acre lot will be the smallest lot in that neighborhood. He didn't believe they could grant without frustrating the purpose of the ordinance. The .6 acre lot would be too small and un-useable given other lots that are

close to the two acre size. Going on to part B, because of special conditions of the property that distinguish it from property in the area it cannot be reasonably used in strict conformance, the rationale the applicants gave was the irregular shape of the lot and having frontage on two roads. He felt that having frontage on two roads was not a reason for hardship. It may just give them an opportunity to subdivide that others don't have. Looking at the parcel to the west, they are basically running north/south so they only get 200 ft. frontage on N. River Rd. The subject parcel happens to run east to west parallel to the road and parallel to Falcon Ridge. He didn't believe that was a reason for unnecessary hardship.
B. Pichette said it would deprive the applicant of any reasonable use of the land, keeping it at 2.6 acres. The purpose is reasonable because it creates two properties on an irregular lot. Besides what Zach said, he agreed.
L. Horning asked for clarification of his answer. Was he saying that denial would result in unnecessary hardship? Or not?
B. Pichette said it would.
L. Horning said she sits between both of their positions. In leaving that lot the way it is, it does represent a peculiarity for the homeowner, But, she didn't think there was any fair and substantial relationship between the zoning ordinance, which was already in place when the homeowners purchase the property, which was her question – were they aware the road was there when they purchased the property? The road was there. They purchased the property knowing the road was there and this might conceivably present a problem for them. Question B is, if the criteria in subparagraph A are not established, then hardship is deemed to exist only if there are special conditions of the property that distinguish it from other properties in the area. She said Zach pointed out, this would make this lot the smallest lot in the neighborhood and it didn't lend itself to any peculiarities any more than the other lots having to deal with Falcon Ridge's development. She could not in good conscience answer that this would present an unnecessary hardship to the applicants.
K. Taylor didn't think unnecessary hardship was proven after seeing Zach's map. The lot was there and unfortunately construction in back probably damaged it a little, but he agreed with Laura that the applicants knew the condition when they bought it. He didn't think the applicants proved hardship.
F. Seagroves agreed. He felt there was no hardship. What they are asking to do, and he was jumping ahead to intent of Residential R which is to provide low density residential, agricultural land use. This lot is 2.6 acres which is above the minimum 2 acres required in Residential R. That is a conforming lot and he couldn't see how they can subdivide and make a nonconforming lot and a conforming lot. He didn't see any special conditions to the lot to make him feel they should grant making another lot that is nonconforming.
Would granting the variance do substantial justice?
K. Taylor said no. He referred to the hardship.
L. Horning said no. She didn't believe that granting would do substantial justice. The ordinance says loss to the individual that is not outweighed by gain to the general public is an injustice. She repeated this is difficult to decide; can see both sides. But the Board is dictated by the ordinance. Some areas are gray. This situation is one. She didn't hear the applicant testify to any personal loss to himself if not able to develop the lot. In looking at the maps and proposal by the applicants there would be no loss to the individual. She cannot say that granting a variance would do substantial justice in this case.
B. Pichette disagreed. The applicants are going to improve the existing and also add a new home that adds to taxes. The new home will be on a two acre lot. That is why substantial justice will be served.
Z. Tripp agreed with Bob. He thought there was substantial justice. As Laura read , the loss to the individual not outweighed by gain to the public. He looked at what the loss to the public would be.—increased density and more non-rural nature associated with smaller lot. He didn't' think this was a rural nature. A .6 acre cannot get any less rural. There is a large subdivision behind and a mill across the street and a view of Rte. 101A. Loss to the public would be minimal. Would it be a loss to the applicant? In terms of hardship, he didn't think there would be a loss to the applicant because they would still have a lot

to put a single family home on of 2.6 acres. It does have an unusual topography with a very steep slope. Subdividing doesn't help make that lot any more liveable or a better lot. Since there will be no loss or minimal loss to the public, he felt it would be substantial justice.

F. Seagroves said he has gone around and around on this. The Handbook speaks about looking at other four qualifications and if they say "yes" to the other four, this is normally a "yes." It also states the Board of Adjustment cannot inadvertently do injustice by granting an illegal variance. He was not sure this was illegal or not. Falling back to the loss to the individual being outweighed by the gain to the public, he didn't see a gain to the public by denying.

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

Z. Tripp was undecided but would read from his note. As read by Laura, the intent of the Residence R is low density sensitive l to the rural character of the neighborhood. As he commented earlier, in looking at this lot in this residential R district he didn't necessarily think it is a rural lot as some orher Residential R lots in town may be. Looking at surrounding properties it would be the smallest lot. The second smallest is the adjacent lot, but that has common land next to it so it has appearance of being larger. The existing lot had frontage, it didn't have depth. Does a .6 acre with 200 ft of frontage violate the spirit of the ordinance, or a 2 acre lot with 200 ft of frontage violate the spirit? He didn't know how those two are different to the general public, regarding the substantial justice question. He was curious to hear other input from Board members.

B. Pichette said the spirit of the ordinance would be observed because, according to the Handbook, it doesn't threaten the public health, safety or welfare of the public. It will not result in overcrowding in that area. There are many single homes and businesses in that area. That is why he thought the spirit of the ordinance would be observed.

L. Horning said she was in the same perplexing situation she mentioned in question 4. Reading from the Handbook, she said the spirit of the ordinance is the "health, safety or general welfare of the community, doing this by lessening congestion in the streets, securing safety from fires, panics and other dangers, and providing for adequate light and air." It also refers to the "legal purpose the ordinance serves and the reason it was enacted" which requires "that the effect of the variance be evaluated in light of the goals of the zoning ordinance." They extract certain wording and forget the health, wealth and safety, but they must take the entire ordinance into consideration. They must take the entire zoning ordinance and its intents and purposes into consideration. She cannot say this variance can be granted without violating the spirit of the ordinance. There is residential zoning in that area for a reason because taxpayers have decided that that is where it should be and that it should be a two acre lot with 200 ft. frontage. Unfortunately, some cases will hinge on the hardship question. Without that being met, in her opinion, she cannot say this could be granted without violating the spirit of the ordinance.

K. Taylor said looking at the whole ordinance, like Laura, he didn't see a hardship was proven. They must look at the whole ordinance.

F. Seagroves said he agreed with Laura. He believed they would violate the spirit of the ordinance because the spirit is to keep less density in that area even though some other houses there are on smaller lots. A lot of them were built before zoning. They must look at every case. When zoning was set up, they wanted to keep density down. He believed that is the spirit of the ordinance. He didn't see how he could grant taking two lots and making a nonconforming lot.

F. Seagroves asked for any further questions or comments. There were none. He called for a vote.

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

Z. Tripp – yes
L. Horning – yes
B. Pichette – yes
K. Taylor
F. Seagroves – yes

2. Would granting the variance not be contrary to the public interest?
L. Horning – yes
B. Pichette – yes
K. Taylor – yes
Z. Tripp – yes
F. Seagroves – yes
3. 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 provisions 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.
B. Pichette – yes
K. Taylor – no
Z. Tripp – no
L. Horning – no
F. Seagroves – no
4. Would granting the variance do substantial justice?
K. Taylor – no
Z. Tripp – yes
L. Horning –no
B. Pichette – yes
F. Seagroves – yes
5. Could the variance be granted without violating the spirit of the ordinance?
K. Taylor – no
B. Pichette – yes
L. Horning – no
Z. Tripp – no
F. Seagroves – no
Chair requested a motion.
Z. Tripp made a motion to deny Case #2013-03
L. Horning seconded.
Final Vote:
Z. Tripp – yes
L. Horning – yes
B. Pichette – no
K. Taylor – yes
F. Seagroves – yes
Chair informed the applicants they had been denied and reminded them of the thirty-day appeal period.

Other Business:

Election of Officers:

Election of Chair:

L. Horning moved to re-elect F. Seagroves as Chair.

B. Pichette seconded.

There were no other nominations.

Vote: L. Horning – yes; Z. Tripp – yes; K. Taylor – yes; B. Pichette – yes

Election of Vice Chair:

K. Taylor nominated Laura Horning to serve as Vice Chair

B. Pichette seconded. Laura accepted.

There were no other nominations

Vote: B. Pichette – yes; Z. Tripp – yes; K. Taylor – yes; F. Seagroves – yes

OEP Training:

F. Seagroves brought up the OPE training taking place May 11. He recommended that Board members attend a session on "Role of ZBA" which is a whole-morning conference and there is an afternoon conference. Also from 2:15 to 3:30 there is Planning Board and ZBA role-playing explaining how the two boards work together. That day was the first day to sign up on line, so Board members can do so.

Attendance:

F. Seagroves asked, if a Board members knows in advance they will not be attending a meeting, please let the office know so that an alternate can be ready to come in and sit. He would like to not have any meetings with only three or four members.

Following approval of minutes from a previous meeting, there being no other business, the meeting was adjourned at 8:00 p.m.