Town of Milford
Zoning Board of Adjustment Minutes
July 17, 2014
Adelaide A. Lawn
Case #2014-11
Variance

Present: Zach Tripp, Chairman
Laura Horning
Michael Thornton
Len Harten
Joan Dargie

Excused: Fletcher Seagroves, Vice-Chair
Katherine Bauer – Board of Selectmen's representative

Secretary: Peg Ouellette

The applicant, Adelaide A. Lawn, owner of Map 22 Lot 20, 75 Summer St., in the Residence A district, is requesting a Variance from Article V, Section 5.02.4: A, for the creation of a lot with 50 feet of frontage where 100 feet is required.

Minutes approved on August 7, 2014

Zach Tripp, 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 and introduced the Board members and explained the procedures of the Board. He read the notice of hearing into the record. The list of abutters was read. Present were: William McBrien of 79 Summer St., Edwin Killam of 72 Summer St., and Thomas Sommers of 8 Nichols Rd. who was appearing on behalf of applicant. He then invited the applicant forward to present their case.
T. Sommers came forward and stated he was representing Adelaide Lawn, who owned a parcel of land as shown on the map, almost 1.4 acres. When purchased, she was given the understanding there was a possibility of subdivision, were exploring that. He stated the parcel was large enough but currently had 150 ft. instead of 200 ft. He stated it was 150 ft. x 398 ft to the back. He had walked the land. He stated he was a civil consulting engineer by training, most specifically in land development, but is now a carpenter. They felt the request was reasonable because of the size of the property and because they could put a house on a portion of it that will allow it to remain in the spirit of the ordinance in terms of width and depth, without intruding on the abutter. He further stated the land had a moderate slope, about 6 to 7 ft. at the street, dropping to about 4 ft; it was

below the street level, driveway could be developed down to the 50 ft. to the back portion of the land and a single-family dwelling-which is what they were presenting and intending it to be -could be built reasonably and safely on the property.
Z. Tripp asked if Board members had questions.
L. Harten asked, of the 50 ft. frontage, he guessed the driveway is 20 ft wide?
T. Sommers stated the existing drive is about 10 to 12 ft. and the proposed one would be 10 to 12 ft, which was typical of single-family. He said 20 ft. was pretty excessive. One might have an opening of 20 ft. and then narrow down to 10 to 12 ft.
L. Harten noticed on the sketch they had 15 ft. from the abutter on the right. Unless he wasn't seeing it, the setback from the existing?
T. Sommers said it was 15 feet. It was his understanding that a driveway could encroach on the setback but he believed the driveway could be substantially in the center of that. You would still have 20 ft. and could have some fill that went over and encroached, but the drive could be kept in the center.
Z. Tripp said according to the diagram it appeared they had about 20 ft. right down the center.
T. Sommers said yes, right down the center of it.
J. Dargie said the lot for the proposed house would be long and narrow and open out to the back. So the new house would take up all the back of the other house's land.
T. Sommers didn't understand her question.
J. Dargie pointed to the drawing and the whole back of the lot, and said the frontage would just be the driveway.
T. Sommers said it would have a 250 ft. driveway with the house centered on that lot.
Z. Tripp said the application stated 150 ft. frontage, but the tax map, although it can't be read easily, appears to have 105 or 165 ft. He asked if it was actually measured.
T. Sommers said yes; because any subdivision will require a final survey he went by the deed, which showed 150 x 398.
Z. Tripp said that seemed about right in comparison to other lots. In response to his question,
T. Sommers said both lots would have water and sewer.
Z. Tripp asked to confirm that the house on the existing lot would be just as conforming as now and will be able to put a house on the second lot and maintain all requirements except for frontage.
T. Sommers said the house on the existing lot will be totally in conformance.
Z. Tripp asked if there were any other questions from the Board.
L. Horning said hers was covered conformity of the house after the driveway was constructed.
T. Sommers said the front porch on the existing house was not in conformance and will remain in non-conformance with respect to the front setback. He wanted to correct the statement it was totally in conformance. He said what is not in non-conformance was the only part and it will not be any worse or better than today. They weren't going to take the porch off.
Z. Tripp opened up the meeting for public comment. There was none. He closed the public portion of the meeting and asked the applicant to read the application into the record.

A variance is requested from Article V Section 5.02.4:A of the Zoning Ordinance to permit: Allow for a 2 lot subdivision of a 59,677 SF lot with 150 ft of frontage. One lot with existing single family house to have 100'of frontage and a second lot to have 50' of frontage, said lots to have approximately 20,000 SF and 39,677 SF respectively.

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

Property is substantially larger than minimum allowed. Each proposed lot will be larger than many on street and in area--public water and sewer are existing.

2. If the Variance were granted, the spirit of the ordinance would be observed because:

The intent of Residential A district remains. Each proposed lot has more than the minimum area and width intended by the ordinance. (He commented that he meant by that at the point where the house would be developed the actual shape of the lot at that location met the spirit of the ordinance.) Dwellings existing and proposed are single-family. (He said they weren't proposing anything other than single-family with this application.)

3. Granting the variance would do substantial justice because:

The owner will be allowed reasonable use of a large parcel in keeping with the neighborhood. (He commented there are many lots in the neighborhood that are substantially smaller than what was proposed.)

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

A single additional dwelling on a substantial lot will not diminish neighborhood property values. (He added that a new house built will meet new energy efficiency requirements, etc. and would be on the upper end of values because of what has to be built today. Summer Street is a beautiful street with a wide variety of houses in different price ranges.)

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:

The existing parcel has more than adequate area, width and depth to provide for a second single-family home. It lacks only the minimum road frontage. A reasonable second lot development meeting the intent of the ordinance is achievable yet denied without a variance.

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

There are many substantially smaller lots on this street and in area. A second single-family lot fits this neighborhood without diminishing existing values and yet allows this owner full use of this parcel.

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:

The lot is almost 4 times larger than required and has a configuration which meets the intent of the ordinance for a second dwelling lot. Without a variance a second lot is not allowed, frontage being the only restricting feature. Most developed lots in neighborhood are smaller, many substantially, some with less frontage and area now required by ordinance.

L. Horning asked the age of the current house.
T. Sommers said it was about 100 years old.

Z. Tripp asked if the board had any additional comments or questions; 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?

J. Dargie was not sure it would be contrary to the public interest. There are reasons for having a requirement for larger frontage in the ordinance. She didn't know that when you buy a house on a single lot you can assume it could be subdivided. If everybody in the neighborhood started putting houses behind their house would that be contrary to the public interest? She was hoping for a larger picture to see what it looked like. It was hard to tell from the broken up lots.

Z. Tripp asked if she wanted him to ask other members to speak. J. Dargie said yes.

M. Thornton said he didn't believe it would because as an effective solution they could extend the driveway straight back and give an easement, have a square in the back as in front and give 150 ft of footage and just allow one driveway.

Z. Tripp wasn't sure of the requirement of having more than one dwelling on the lot.

L. Horning thought it was 150 ft. on a town accepted road. She didn't think you could extend the drive and give them 150 ft. on a private driveway. It is 150 ft on the road frontage.

M. Thornton asked if that was for each lot.

L. Horning said, for each lot. It does not quantify as a private driveway. It is 150 ft on the street side.

M. Thornton said he got that.

L. Horning she can't put in a driveway and call it 200 ft.

M. Thornton still didn't think it defeated intent.

Z. Tripp asked if he was saying they could grant it without being contrary to the public interest. He started off saying no., so he wanted to clarify.

M. Thornton said it was not contrary to public interest.

L. Horning said she was a little torn on this because the ordinance went into place after this was constructed. For her, it meant hardship in that the ordinance was forced on this house. However, she was concerned it didn't fall within the spirit which was to control density in the area. That was the reason for the ordinance. For her, subdividing would not be in the spirit of the ordinance because that was the reason for the ordinance in the first place. The paradox was that created a hardship in her opinion, in that the ordinance was forced on the owner after having the property in their family.

Z Tripp said she was sort of skipping to criteria #2, but 1 and 2 are tied together.

L. Horning said she would have to say no because of the way the ordinance was written.

L. Harten didn't think it would be contrary to the public interest.

L. Horning mentioned density which was a concern when the ordinance was written, but this being an oversized lot–not oversized but larger lot—he believed putting a second dwelling on the back part of the property would not be contrary to public interest. Realizes 50 ft. was a problem as far as road frontage but he was looking at it as there was just a driveway with 50 ft. It affected the whole lot but he believed the lot was large enough that granting would not be contrary because there was substantial space in the back so that there would not be a problem.

L. Horning said he made a valid point.

M. Thornton said it was more than twice the square footage required.

Z. Tripp said he thought they could grant without being contrary to public interest because it wouldn't alter the essential character of the neighborhood. It wouldn't threaten health, safety or general welfare of the public. Both lots will meet all requirements except for the frontage. He was leaning toward what L. Harten said.

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

L. Horning didn't think it would affect general health, welfare or safety. She didn't think a house there would create a public fire hazard or other danger outlined in the ordinance.

M. Thornton said if the lot was turned sideways they could put three conforming lots.

L. Horning said she understood that.

L. Harten said he believed it could be granted without violating the spirit. Going back to where he was on the first question as far as density, it would be the main upshot of the spirit of the ordinance. As was mentioned, and from his personal experience traveling the street, most of the lots are much smaller and setbacks not in compliance with current zoning. He didn't believe granting this variance would be violating the spirit of the ordinance as written.

M. Thornton said yes. Looking at density and strictly looking at frontage it didn't comply. But if you are looking at density, it had enough area for three conforming houses. Looking at the overall intent for limiting density, he didn't see an issue and they could grant the variance.

J. Dargie said the spirit of the ordinance was for density. They put road frontage in for a reason because they knew some of these were going to be long in back. If everybody put a lot in the back.. She thought it was violating the spirit of the ordinance.

Z. Tripp said variances by nature violate the nature of the ordinance. Using M. Thornton's example, you could almost make lots and make them skinny and deep and line those up. He believed the frontage was to control spacing on the street. As L. Harten said, portions of the street where lots are small, but as you get further on they are larger, and on Shady Lane there are lots with more frontage, which is a good example of what the ordinance wants.

3. Would granting the variance do substantial justice?

L. Harten said it would. It was an unusual lot. He wasn't sure there were others on Summer St. with a shortage of frontage that want to put a house in the back portion of the lot, but they have to look at each case individually, as Z. Tripp said. He felt the loss to the owner of the property would far outweigh any gain as far as public interest was concerned.

J. Dargie said she was leaning toward it would not do substantial justice. She asked T.Sommers if this lot had been in the family for over 100 years, or since 1969 when zoning went into effect. Otherwise it would have been grandfathered.

T. Sommers said his client bought it in 2004 or 2005.

J. Dargie said that was well after zoning. Applicant knew she couldn't subdivide that.

M. Thornton said yes because the owner would be penalized for the shape of the lot. If the lot were turned 90 degrees they could have three conforming lots so it is still lower density in the neighborhood than could be. Absent the shape and orientation of the lot it met all the requirements, so he would say yes.

L. Horning said this was a tough question to answer. She quoted from the Handbook, page 11-11 "3. Substantial justice is done." It doesn't have to do with the shape of the lot. It has to do with street density, with egress, how to get in and out, how many vehicles are traveling that street and how many emergency

vehicles can get in and out. She looks at the situation and sees a resident who purchased the lot in 2004 who could have been readily aware the ordinance said they needed 150 ft. frontage to subdivide. The guiding rule in substantial justice is looking at the gain to the public vs. the gain to the homeowner. The gain to the public is that the density in that street and area is controlled. She couldn't say there was any substantial loss to this individual that would be outweighed by gain to the public.

Z. Tripp thanked her for reading from the manual, as he had been going to do that. He struggled with this. Not granting would be a loss to the landowner. But the public has something to gain in that neighborhood because it would be controlled density. Using the cumulative factor, if everyone had more than two times the minimum frontage of 150 ft. frontage did this, the neighborhood as a whole would probably have a loss. He would probably have to say yes on substantial justice.

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

J. Dargie said no. It could diminish value because it was making it more dense than it already was. The other concern with a 250 ft. driveway as L. Horning mentioned, was fire apparatus.

M. Thonrton asked if having a long driveway would keep someone from having a house at the back of their lot.

J. Dargie said the driveway is limited.

M. Thornton said if the width of the driveway was the issue, the applicant could say they would go 15 ft or 20 ft. They have room for 20 ft. . . .

L. Horning agreed they did.

M. Thornton said the other areas could be a horse run or dog run.

L. Horning said J. Dargie had a valid point.

M. Thornton agreed. He said he struggled with that.

Z. Tripp asked if granting the variance be done without diminish value of the abutting property.

M. Thornton said yes.

L. Horning said it could be granted without diminishing values of abutting property. It would probably enhance values of surrounding property. There were several lots that have lots like that. It was not unusual to have a 10 or 12 ft. drive. She believed it would enhance. There was plenty of room to segregate it and have all setback and criteria. The only thing restrictive is the 150 ft. in front.

L. Harten did not believe there would be any diminution of abutting property. All the required setbacks would be in place for the second lot as far as side and rear setbacks. He didn't have a problem with the emergency vehicles gaining access to the back. The drive would be substantial enough to deal with that. To reiterate L. Horning, he believed it would enhance value. Assuming they will be looking at a well-constructed home back there. He didn't believe there would be any loss of value to other properties.

Z. Tripp agreed with L, Harten. Looking at this property by itself, it will have all proper setbacks and plenty of space for it. All entrances will be in front. He didn't believe, looking at this property in itself, it would diminish value of the surrounding properties.

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 use of it:
L. Horning commented this was one of the most difficult tests for any property to meet. She had been under the impression this property had been owned by the applicant for a great deal of time. But it was purchased in 2004, many years after the zoning ordinance was in place. This was not only one with 150 ft., it is one of several. There was no bar to strict conformance of the ordinance, nothing preventing the owner from continuing to use it in its current use. But it's the street frontage and the way it was constructed. Nothing is preventing the homeowner using it as it is now and that being said, she didn't see any hardship. Maybe the Board could change her mind.
J. Dargie said the homeowner can reasonably use the property right now.
Z. Tripp asked if she didn't think they satisfied the three prong requirement: the special conditions of the property, no fair and substantial relationship, and the reasonable use.
M. Thornton said it could be granted. He believed no fair and substantial relationship exists between the public purposes of the ordinance and specific application of the property because of the word "density." The proposed use is a reasonable one "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 the other properties in the area, the property cannot reasonably exist in strict conformance with the ordinance and a variance is therefore necessary." If they're looking at *only* frontage and not the root intention of the ordinance, the answer would be no. But if they were looking at density and the fact this homeowner is burdened with property on which she has to pay taxes that she cannot use in its fullest measure, he believed there was a hardship. His answer was yes.
L. Harten said he agreed with what M. Thornton said. He didn't disagree with what L. Horning said because the current owner already had use of the entire property. He believed in this case that relief from the ordinance was reasonable. He didn't believe if they granted the variance there would be an unnecessary hardship,
Z. Tripp said regarding special conditions that distinguish it from other properties in the area, as mentioned, it was the size of the property -1.4 or 1.5 acres. The question was whether that size made it different from others in the area. He didn't believe so. There are smaller lots south on Summer St., mostly older, more dense area. For example, with a bigger number, ten acres to be subdivided, that might be a different case than 1.5 acres. He wasn't seeing this lot had special conditions that made it different from some others in the neighborhood. Re #1, he didn't believe they could grant without frustrating the purpose of the ordinance, that being frontage. This lot didn't have anything unique other than being that much larger. The owner could still use 1.5 acre lot in this area in a reasonable manner. It is a difficult case. He would like to grant relief to owner, but in this case he didn't think he could find hardship.

Z. Tripp called for a vote.

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

L. Harten – yes L. Horning – no J. Dargie – no M. Thornton – yes Z. Tripp - yes

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

L. Horning – no L. Harten – yes M. Thornton – yes J. Dargie – no Z. Tripp - no

3. Would granting the variance do substantial justice?

M. Thornton – yes J. Dargie – no L. Horning – no L. Harten – yes Z. Tripp yes

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

L. Harten – yes L. Horning – yes M. Thornton – yes J. Dargie – no Z. Tripp- 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.

M. Thornton – yes J. Dargie – no L. Horning – no L. Harten – yes Z. Tripp - no

Z. Tripp asked if there was a motion to deny Case #2014-11, a request for a variance.

L. Horning made the motion to deny Case #2014-11

J. Dargie seconded the motion.

Final Vote on motion to deny

L. Horning – yes J. Dargie – yes- M. Thornton – no L. Harten – no Z. Tripp - yes

Case #2014-11 was denied by 3 – 2 vote.

Z. Tripp informed T. Sommers of denial and reminded the applicant of the thirty (30) day appeal period. (T. Sommers asked if he could make a comment and Z. Tripp said he could not.)