

Town of Milford
Zoning Board of Adjustment Minutes
September 4, 2014
Case #2014-12
Variance
Bill King

Present: Zach Tripp, Chairman
Fletch Seagroves, Vice Chair
Laura Horning
Mike Thornton
Joan Dargie

Excused: Katherine Bauer – Board of Selectmen’s representative

Secretary: Peg Ouellette

The applicant, Bill King, of 223 South Street Properties, LLC, owner of Map 29 Lot 95 at 223 South St in the Commercial District, is requesting a variance from Article V, Section 5.03.5.1 to allow the subdivision of a 13,107 SF residential lot with 124.54 feet of frontage and a two family dwelling.

Minutes approved on September 18, 2014

Zach Tripp, Chairman, opened the meeting and informed all of the procedures for the meeting and read the notice of hearing into the record. The list of abutters was read. No abutters were present. Bill King, owner of 223 South Street, was present. Zach Tripp said this case was a little unique and summarized his understanding for the benefit of the Board and the audience. He stated there were three cases tied to the same property, currently zoned commercial. There was a pre-existing business and a 2 ½ story two-family home.

He then invited the applicant forward to present his case

Z. Tripp stated the applicant wanted to subdivide with a new residential lot with the home on it, which is allowed in the Commercial zone under 5.05.1.P, which is a two-family or multi-family dwellings with respective related conditions set forth in Residence B. Residence B requires 20,000 SF of side and 150 SF frontage.

Bill King gave brief description of what he would like to do, he said it is one property with two buildings and two separate uses, one being residential, which is a two-family income property. In the back is a garage currently occupied by Mont Vernon Towing. There was residential and commercial use on the same property. He was asking to split the two, which he felt was advantage to the Town.

Z. Tripp asked how long the lot had had the dual purpose.
B. King said probably for about 50 years.
Z. Tripp asked the rationale for subdividing it.
B. King said the reason was for ease of selling.
Z. Tripp asked for questions from the Board. There were none.
Z. Tripp opened the meeting for public comment. There being none, he closed the public portion of the meeting. 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 requested smaller lot size (13,000 Sq. Ft.) and reduced road frontage (125') would be in line with other properties on South Street.

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

This variance will not affect in any way the public health, safety, morals, general welfare or civil rights of the inhabitants of the Town of Milford. The requested relief will not degrade the area, affect the abutters, or change in any way the use of the parcel. The spirit of any well-drawn zoning ordinance is to preserve the integrity of neighborhoods and the relief requested will not diminish the integrity nor change the uses within this neighborhood

3. Granting the variance would do substantial justice because:

It would not change the appearance of the location and the property would have more value to the town. The variance is necessary in order that this parcel with two dissimilar uses be able to be subdivided. Dividing the two dissimilar (but allowable) uses of the existing parcel into two parcels with the dissimilar uses then separated is sensible and logical. It will likely increase the tax assessments of both parcels and thus increase the taxes paid to the Town of Milford from the property. It will allow the properties to be more easily sold in the future, and thus make less likely a situation where any owner, current or future, is holding onto the property longer than they desire, and thus not caring for the property in the best manner. These factors all contribute to substantial justice in allowing the relief requested.

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

This property would not change in appearance or usage. Allowing the relief requested would not affect the surrounding properties negatively in any way, and thus would not diminish their value. Allowing the relief requested has the possibility of increasing the value of the surrounding properties by allowing separate ownership to devote resources to improving either or both of the properties, now or with future owners.

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 general public purposes of the ordinance, including the provision concerning parcel size, is to ensure the public health, safety, morals, general welfare and civil rights of the inhabitants of the Town. Allowing the variance will not affect any of these purposes of the ordinance in any way, much less in any unfair or substantial manner. Thus, this prong of the hardship test is met.

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

The current use does not change.

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:

While applicant asserts that the criteria in paragraph 5.A. have been met, nonetheless applicant wishes to point out that the parcel is unusual in having both residential and commercial uses on

one parcel. Strict conformance will not allow the logical, sensible and reasonable subdivision, and thus reasonable use, of the parcel.

F. Seagroves commented regarding applicant's assertion that granting this would result in increased taxes for the Town, the Board doesn't take that into consideration.

L. Horning commented, for the benefit of the viewers, that the Board was not allowed to do so.

J. Dargie asked about the proposed access easement, where would the lines be?

B. King stated the driveway for the shop is the frontage.

J. Dargie asked if it would go with the house or the shop.

B. King said it would go with the shop.

J. Dargie asked if there was really an easement.

B. King agreed.

In response to a question from F. Seagroves about parking for owners of the residence, applicant said there was parking on the other side. Z. Tripp pointed out where the residence driveway and the business driveway would be.

L. Horning inquired about the setback from the house to the driveway of the business.

B. King said it was 15 ft to the main – actually that was the Special Exception being requested in a following case.

L. Horning understood, but asked if it would be 15 ft at the back side where the driveway goes in, if the variance was approved.

B. King said that was correct, if the variance was approved. Then they are talking about the back lot line and side. The main foundation is 15 ft away but there is a small alcove coming from the bedroom and another that drop down to 11.5. That was stated in Case #2014-14, if this application was approved.

L. Horning asked whether there was nobody willing to purchase it as a whole.

B. King stated he had tried selling it, but when he purchased it there weren't a lot of people interested. Many expressed interest if one were separated from the other.

There was discussion of the properties on either side being residential. It was agreed that the area was commercial zoned but with residences. Subject property was a commercial lot being divided into two commercial lots, but a residence is allowed in a commercial lot, per the Residential B District.

B. King stated there were several residential and several commercials up and down South St.

Z. Tripp proceeded to discussion of the criteria.

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

J. Dargie – yes, it would not be contrary to the public interest. They are not adding or taking away a building.

M. Thornton – yes.

L. Horning asked questions re how many feet short it was for a residential lot. There was discussion between her and Z. Tripp regarding the requirements for lot size and frontage and the request to decrease the frontage. It was determined that that issue was included in the next case for a variance.

F. Seagroves said he didn't see any harm to the public.

L. Horning said that regarding the residential lot, she didn't see it would be contrary to the public interest.

Z. Tripp agreed. The reduced footage would not unduly and to a marked degree violate the zoning objective, change the character of the neighborhood, the lot wouldn't be any worse crowded than it already was.

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

F. Seagroves didn't see any health, safety, or general welfare of the community problems.

J. Dargie - yes. It is the same.

M. Thornton – yes, nothing changes.

L. Horning agreed. Property has already been used as a two-family and has been for a number of years.

Z. Tripp – agreed. The purpose of size and frontage requirements was to control density. This wouldn't increase density or allow any future increase.

3. Would granting the variance do substantial justice?

M. Thornton – yes. Nothing changes. Nobody will be damaged by it; nobody will benefit except perhaps when it came time to sell.

F. Seagroves – yes. He quoted from the Handbook that any loss to the individual not outweighed by gain to the general public is an injustice.

L. Horning agreed.

J. Dargie –yes.

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

M. Thornton – yes. Nothing changes.

J. Dargie – yes. There is no change.

F. Seagroves – didn't see any diminishment.

L. Horning – there would not be any diminishing of property values of abutting property by separating the residence from the property out back.

Z. Tripp agreed. There would be no change in structure or use. Didn't see abutting properties would be affected.

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.

F. Seagroves – proposed use is reasonable, although breaking it up the house will sit on 13,107 SF where 20,000 SF is required. That is 6,993 SF difference. The second parcel is 1.4 acres, which is well within. He didn't see how else it could be broken up; must leave access to the back. He felt it was a reasonable use, given the unique setting of the property as well.

L. Horning agreed. Looking at whether the relationship between the general purposes of the ordinance outweighing the prohibition to this property in strict conformance. To require strict conformance creates a hardship because of the peculiarity of the size and topography of the lot and the fact that it has been used for substantial number of years as a commercial lot; there are variables that set it apart from other properties. She didn't need to answer B because the proposed use is a reasonable one. It is already acclimated to the area and accepted by the ordinance.

M. Thornton – re 5A, he believed that to deny would be creating an impropriety – hardship to the applicant and gain nothing for the town. Re a.i, yes. Re ii, the proposed use is a reasonable one. It just made sense. Re b., he didn't need to answer because he answered to both of the above.

J. Dargie – agreed. There was no fair and substantial relationship existing between the public purposes of the ordinance and the specific application of the provisions to the property, and it was a reasonable use.

Z. Tripp agreed. The special condition of the property was the current mixed use and it was testified that it had been that way for many years. The current lot was already non-conforming frontage at about 142.5, which was less than 150 ft required, before the subdivision; there was already some restriction of the frontage. Re ii, reasonable use, it was a reasonable use. Dividing it made sense. It made both lots much cleaner both in use and zoning aspect. The way the applicant went about it made sense. The commercial portion, which is in the next case, was already a large

lot. He could tell he tried to maximize the residential portion, going all the way to a pathway to the door of the business and all the way north to the driveway of the commercial use, which was reasonable. Re i, restricting this lot to the size and frontage requirements would not promote valid public purpose. They can grant relief without frustrating the purpose of the ordinance, per the other questions he already answered. Use remains unchanged with no impact on the neighborhood.

The Board proceeded to vote.

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

F. Seagroves – yes L. Horning – yes M. Thornton – yes J. Dargie – yes Z. Tripp -yes

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

L. Horning – yes M. Thornton – yes J. Dargie – yes F. Seagroves – yes Z. Tripp - yes

3. Would granting the variance do substantial justice?

M. Thornton – yes J. Dargie – yes F. Seagroves – yes L. Horning – yes Z. Tripp - yes

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

J. Dargie – yes F. Seagroves – yes L. Horning – yes M. Thornton – yes 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 the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

F. Seagroves – yes L. Horning – yes M. Thornton – yes J. Dargie – yes Z. Tripp – yes

L. Horning made the motion to approve Case #2014-12.

F. Seagroves seconded the motion.

Final Vote

L. Horning – yes F. Seagroves – yes M. Thornton – yes J. Dargie – yes Z. Tripp - yes

Case #2014-12 was approved by a unanimous vote.

Z. Tripp informed applicant his request had been approved and reminded him of the 30-day appeal period.