

**Town of Milford
Zoning Board of Adjustment Minutes
November 3, 2011
Case #18-11
Michael R. Ciardelli, Heather M. Ciardelli, Andrew J. Ciardelli
Variance**

Present: Kevin Johnson, Chairman
Laura Horning
Fletch Seagroves
Zach Tripp - Alternate

Absent: Steve Winder
Steve Bonczar

Secretary: Peg Ouellette

The applicants, Michael R., Heather M. and Andrew J. Ciardelli, owners of Map 54, Lot 2-1, 0 Stable Road., in the Residence "R" district, are requesting a variance from Article V, Section 5.04.4 to create a new single family residential lot without the required 200ft. frontage on a Class V or better road.

MINUTES FOR CASE #18-11 NOVEMBER 3, 2011 MEETING WERE APPROVED ON DEC 1, 2011.

Kevin Johnson, Chairman, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance 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. Attorney Alexander S. Buchanan was present representing the applicants. Abutters present were:

Town of Milford –Bill Parker. Community Development Director/Zoning Administrator

K. Johnson informed the applicant that there are four members of the Board present and applicant has the right to be heard by a full five-member Board. If the applicant chooses to be heard by a four-member Board, three affirmative votes are still required for approval of the variance. The applicant may choose to have the application tabled, or be heard by the four-member Board. If the applicant chooses to be heard by the four-member Board, a waiver must be signed. The applicant chose to have the hearing heard by four members and signed the waiver.

Applicant's presentation: The applicant's representative stated he is Attorney Alexander Buchanan, an attorney with an office in Nashua who is representing the Ciardelli family. They are requesting a variance from the Zoning Ordinance so they may subdivide a small portion of a tract for a single family home where that new lot will not have adequate frontage according to the terms of the ordinance on a Class V or better road. He presented a site map which is a better view than that which was included in the application. He stated the map that was included in the application was a conceptual one as to where the new lot would be but the lot may be placed on the other side, depending on the surveyor's recommendation of the best use of the land.

K. Johnson asked whether, regardless of where the proposed lot is located, it would be accessed by the same easement.

Atty. Buchanan said that is correct. He just wanted to make the Board aware that the placement on the site map is not exactly where the lot may be, because there may be competing concerns making it not possible to place it there. He stated that the access comes through Wyman Way and through a deeded right of way to 54-18 and 54-15 to access the whole of 54-2-1. Essentially the proposal is to create a lot that is permitted within the zone. The variance requested is for the frontage requirement. He then went through the five criteria for a variance:

1. The proposed variance will not diminish surrounding property values: They do not believe it will because the use is consistent with the uses in the zone, there is nothing that would disturb the neighborhood in any manner. He submitted a letter from a qualified appraiser stating in his opinion that the use as proposed would not cause any diminishment of value of the surrounding properties. **2. Granting the variance would not be contrary to the public interest:** The public interest would be served because the use is allowed in the subject zone and the public interest sought to be maintained would not be impaired by the granting of the variance. Generally the concept of the public interest zoning is to segregate uses and have compatible uses with compatible uses. Applicants are asking to do exactly that in this zone.

3. Denial of the variance would result in unnecessary hardship: The attorney stated that the lynchpin of most variance requests is whether denial of the variance would cause unnecessary hardship on the applicant. They believe it does. Unnecessary hardship means that due to the special conditions of the property that distinguish it from other properties in the area and **i. there is no fair and substantial relationship between the general public purposes of the ordinance and the specific application of that provision to the property.** They maintain the property is different from others in its immediate area because it is an undeveloped parcel adjacent to an existing subdivision with granted access rights through the subdivision. There is no other property with that configuration and attributes in that area. The second prong of the test is there is no connection between the specific application of the provision "general public purposes" of the ordinance. In this case, the issue is frontage. The general purpose as stated in the ordinance is promoting public health, safety, morals, general welfare and civil rights of the Town of Milford. They feel the use of this land as a single-family home, abutting other similar homes,

would impair any of those general purposes. While not stated in the ordinance, the general consensus among planners is that frontage is a control for density and by having minimum frontage on roads the size of the lot is controlled, and therefore the density is controlled. They don't believe that is necessary in this case because the intent is for the lot to meet minimum acreage zoning requirements. The density is consistent with the Wyman Lane subdivision and may be more than two acres depending on what the Planning Board decides they want as to setting up a ratio of open space to the Wyman Road subdivision. Atty. Buchanan stated it is his understanding that when the Wyman Road subdivision was approved a thirty percent open space was required. If the Planning Board wants that, they can add that thirty percent into the lot size to keep the density the same. It is the applicants' position that use of this property as a single family house lot without frontage will in no way impair the purposes of the ordinance or create any problem. In addition, if the applicant has shown that there is no other effective use of the property without the variance, then it should be granted. In this case, in order to subdivide a lot to be used as a single family home or otherwise, there must be frontage. The applicants feel they meet the criteria for the first part of the ordinance test as well as that stated in the application.

4. Granting the variance would do substantial justice because: Applicants believe substantial justice will be achieved because the applicants will be able to use their property in a manner consistent with the zone without problems to the neighbors by not having frontage. The access way is wide enough and will be built to handle any public vehicles that need access.

5. The use is not contrary to the spirit of the ordinance because: The spirit of the ordinance relates to the public interest of the ordinance. Granting the variance is not going to cause substantial change. It will not change a residential neighborhood into an industrial neighborhood, which would be contrary to the spirit. In this case, it is being done with a compatible use and a permitted use and would not go against the orderly growth and appropriate use of the land. The subdivision could have been done with the lot added in and the acreage reconfigured, but it is already there and can't be redone.

K. Johnson disagreed on one point, that the specification of the frontage is to limit density. The limiting of density is by specification of lot size. The frontage requirement is more for health and safety, to allow safe ingress and egress etc. as well as to permit ease of emergency services. It appears that the parcel is a landlocked parcel and there are no existing streets to it, and that from the development of the Wyman Lane subdivision with the easement in place it is clear that the intention of placement of the easement was to allow access to this property. That is a considering factor in viewing access for a health and safety of the parcel from this viewpoint.

F. Seagroves had no questions at this time.

L. Horning said two of her questions regarding emergency vehicle access had been answered. She asked the width of the right of way.

Atty. Buchanan stated it is 50 ft wide but he is not sure of the length.

K. Johnson said it appears to be approximately 300 ft across parcel 54-1-5 and approximately another 300 ft across 54-1-8 which brings it up to 54-2-1, so there are approximate 600 ft of easement right of way across the Wyman Lane development. Then, however the lot is configured, with two or three acres, the Board's concern is that the minimum lot size for Residential "R" is met and the placement of the lot is accessed by that easement.

L. Horning asked the applicant's plan for surfacing the driveway.

Atty. Buchanan said it will probably be a gravel road wide enough to service emergency vehicles.

Z. Trapp referred to Lot 54-1-8 owned by Town of Milford and asked if that is common land for that subdivision.

Atty. Buchanan responded that it was done for having smaller physical lots but overall acreage is the same. A certain percentage had to be thirty percent dedicated to open space.

Z. Tripp asked if the easement is wooded or field.

Applicant stated it is currently wooded but there is a trail.

K. Johnson said that in the picture there is a trail that appears to follow the easement.

Z. Tripp asked if lot 54-1-5 is currently a housing lot. Is there a house there?

Applicant stated that is a lot and he believes there are houses on all the lots.

Z. Tripp asked if the driveway would be share.

Applicant stated It is shared.

Z. Tripp asked if 54-1-5 already has 50 ft of frontage.

Applicant said it is not their lot, but there would be 50ft of access from the applicant's lot to the town road.

F. Seagroves asked if it is known how the subdivision will be laid out.

Atty. Buchanan said no, only one lot is being subdivided at this point. He speculated that if it were to be further subdivided it would likely be subdivided with a road coming up from Stable Road.

F. Seagroves said if you subdivided, you could go across that property and then have frontage. If it were subdivided the road could come along the property in question.

Atty. Buchanan said they would have to acquire 54-15 to do that, but developing the property is not be contemplated. Only one lot is contemplated.

F. Seagroves said with the 50ft access is on the corner of the lot and it isn't known where the house will be located.

K. Johnson said the concern is, wherever the proposed new lot is placed, it is accessed through that easement.

K. Johnson opened the meeting for public comment. There was none.

K. Johnson closed the public portion of the meeting.

There was no correspondence received regarding the case.

The applicant having already read the application into the record in his presentation, K. Johnson read 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.*

K. Johnson also referred to ordinance relating to granting a variance: 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.

K. Johnson also stated that variances must meet five criteria as specified by the State of New Hampshire RSA 674:33 Section 1B: *(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 discussed the five criteria under the ordinance:

1. The variance would not be contrary to the public interest.

F. Seagroves said he did not see any adverse effects to the public interest.

L. Horning said it is not contrary to public interest. This is a 50ft wide access and she did not believe there have been any public safety issues with a 50ft wide street or side lane, of which there are several in Milford.

Z. Tripp said he did not believe granting the variance would alter the essential character of the neighborhood as other lots in the neighborhood have about 60 to 50 feet of frontage.

K. Johnson agreed. He did not see how granted the variance would be contrary to the public interest. It is proposed as a residential development in a residential district, adjacent to a residential development and it is clear that when the Wyman Way development was put in place with the easement that access to this property was intended.

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

F. Seagroves said he does not see any negative to the health, safety or general welfare of the community.

Z. Tripp said the spirit of the ordinance as mentioned by the applicant to prevent overcrowding and as the Chairman mentioned to control the lot size to prevent long narrow lots. Since it is landlocked and behind the other lots, the spirit of the ordinance is still observed.

L. Horning agreed and reiterated the Chairman’s comment regarding the first criteria that it would not be contrary to the public interest and the spirit of the ordinance is to keep the neighborhood as a residential neighborhood. Since this is a residential use in a resident zone, she saw no violation to the health, safety or general welfare of the community, or in direct contrast to the entire spirit of the ordinance.

K. Johnson concurred. He said looking at the published intent, which is usually seen as the spirit of the ordinance, it says “the intent of the Residential R District is to provide for low-density residential and agricultural land uses and other compatible land uses that are sensitive to the rural character and environmental constraints existing in the district. “ The intent is to create a lot within the residential size requirements and it meets the low density requirement of residential use, so granting the variance is within the spirit of the ordinance.

3. Granting the variance would do substantial justice.

F. Seagroves said yes, he can’t see where loss to the individual would not outweigh the gain of the general public. He didn’t see where the public would gain by refusing the variance.

L. Horning agreed. She read into the record regarding substantial justice being done that the guiding rule is that any loss to the individual is outweighed by gain to the general public is an injustice. She didn’t believe the public would gain anything over the individual if this were not passed.

Z. Tripp said granting would do substantial justice and there is very little gain to the public and the loss to the applicant would be great, as the lot is landlocked.

K. Johnson agreed and agreed with L. Horning’s reading the guideline provided by the State that loss to the individual must be outweighed by gain to the public. He saw no loss to the public. Bit a substantial gain to the individual in granting the variance; he can see gain to the public in granting it.

4. The values of surrounding property are not diminished.

F. Seagroves said he did not see where values would be diminished at all.

Z. Tripp did not believe values of surrounding properties would be diminished. A potentially shared driveway might diminish values, but with the lot tucked up so far behind the shared lot, any surrounding lots would probably not notice it. So there would be no reduction in property values.

L. Horning referred to a letter that was included with the applicant's information, certified by a general appraiser, that he does not see any diminution to anyone's property. In fact it may enhance the surrounding properties.

K. Johnson agreed, even without the opinion of the appraiser, he could not see that any of the properties – with the small exception of 54-1-5, the corner lot which has the easement across it, might experience some diminution of value. But the buyer of that lot would be aware of the easement at that point. He also could not see a single-family home on the property generating sufficient traffic to have any significant impact to the neighborhood. Then, looking at the appraiser's letter, there is sufficient evidence that there will be no diminution of values.

5. Literal enforcement of the ordinance would result in an unnecessary hardship.

F. Seagroves said that not granting the variance would create a hardship, as the owners would not get full use of the property.

Z. Tripp said reading from the handbook paragraph 5 describing hardship - that hardship is shared equally by all property owners. He previously stated that the lot that shares a driveway already has 50ft frontage and two adjacent lots are 50 ft & 60 ft so it would be equally shared. Regarding Paragraph 1, whether the variance can be granted without frustrating the purpose of the ordinance, it can. There will be no increase in density. Is the proposed use a reasonable one? Given that the parcel is landlocked, it is a reasonable way to attain access.

L. Horning agreed with Z. Tripp. She read the ordinance Paragraph 5 "Only when some characteristics of the particular land in question makes it different from others can unnecessary hardship be claimed." It can be seen that the location of the lot sets it apart, as it is in a precarious position. It is not technically landlocked, as it has right of way access, but nevertheless with a right of way can cause problems with certain uses of the land. She said that a literal enforcement would result in unnecessary hardship, based on the criteria previously discussed by the Board.

K. Johnson agreed that denying would create an unnecessary hardship, since without the right of way the property would be landlocked and would severely limit the applicant's use of the property. The development of the Wyman Way was to give access, this is the only way to get access, and denying the variance would be equivalent to denying the owner access to his property which would create an unnecessary hardship.

6. The specific variance is the minimum variance that would grant reasonable relief to the owner and is necessary for reasonable use of the land or structure.

F. Seagroves said yes.

Z. Tripp said yes.

L. Horning said yes.

K. Johnson said yes.

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

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

F. Seagroves – yes.

L. Horning – yes

Z. Tripp – yes

K. Johnson – 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: A (1) 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 (2) the proposed use is a reasonable one?

F. Seagroves – yes

L. Horning – yes

Z. Tripp – yes

K. Johnson – yes

4. Would granting the variance 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

K. Johnson asked for a motion to approve the variance requested in Case 18-11.

Z. Tripp made motion to approve.

L. Horning seconded the motion.

Final vote:

F. Seagroves – in favor

L. Horning – in favor

Z. Tripp – in favor

K. Johnson – in favor

Case #18-11 was approved by unanimous vote.

K. Johnson reminded the applicant of the 30 day appeal period.