

Town of Milford
Zoning Board of Adjustment
NOVEMBER 3, 2022
Public Hearings

Case #2022-26 Roger Aveni and Loretta Aveni Trust U/d/t 119 Union Street, VARIANCE
Case #2022-27 Stephen Stepanek and SPJ Real Estate Associates, LLC, SPECIAL EXCEPTION

Present: Jason Plourde, Chair
Karin Lagro, Vice Chair
Michael Thornton, Member
Dan Sadkowski, Alternate
Lincoln Daley, Director of Community Development
Paul Dargie, BOS Representative

Not Present: Andrea Kokko Chappell, Member
Tracy Steel, Member
Joan Dargie, Alternate
Jane Hesketh, Recording Clerk

Meeting Agenda

1. Call to Order
2. Public Hearing(s):
 - a. Case #2022-26 Roger Aveni and Loretta Aveni Trust U/d/t 1/28/2008 for the property located at 119 Union Street, Tax Map 29, Lot 22 are seeking a Variance from the Milford Zoning Ordinance, Article V, Section 5.02.4.A to allow the subdivide/creation a lot with 50 feet of frontage on Class V Road where 100 feet is required for a property located in Residential 'A' Zoning District.
 - b. Case #2022-27 Stephen Stepanek and SPJ Real Estate Associates, LLC for the property located at Map 25, Lot 119, 1 Hampshire Drive are seeking a Special Exception from the Milford Zoning Ordinance, Article V, Section 5.05.2 to allow a change of use of the existing commercial/industrial building from a manufacturing use to a distribution facility on a property located in the Commercial 'C' Zoning District. (Request for Continuance to November 18, 2022)
3. Meeting Minutes: 9/15/22, 9/22/22, 10/6/22
4. Other Business: TBD
5. Next Meeting: November 17, 2022 December 1, 2022

1. CALL TO ORDER

Chair Plourde opened the meeting by welcoming everyone and introducing himself. He welcomed those attending in person and electronically since this meeting is being conducted in a unique manner.

He stated you may also attend this meeting in person at the Milford Town Hall, Board of Selectmen's Meeting Room.

If you would like to participate in the public meeting, please call this number from home: +1 646-558-8656 and enter the Meeting ID: 851 6407 7601 and Password: 269952 or log in via www.zoom.com using the Meeting ID and Password previously stated.

A digital copy of the meeting materials can be found on the Town website at: <https://www.milford.nh.gov/zoning-board-adjustment/agenda/zba-agenda>. We will also be live streaming the meeting on Granite Town Media, Government Channel 21: <http://gtm.milford.nh.gov/CablecastPublicSite/watch/2?channel=2>

He then went on to inform everyone about the procedures of the Board.

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Chair Plourde stated all votes taken during the meeting must be done by Roll Call vote. He started the meeting with a roll call attendance by asking each member to state their name; Roll Call Attendance with everyone in attendance at Milford Town Hall: M. Thornton present; K. Lagro present; D. Sadkowski present; J. Plourde present. He explained there are 3 voting member with D. Sadkowski sitting in as a full member. He explained what will happen with a 4 member board and asked the applicant if they wanted to proceed or continue the case.

He stated there are 2 cases to be heard and then explained the process of the case hearings for the applicant and the public. He said a full agenda may not allow all cases to be heard and that at 10:00 p.m. the meeting will end. He explained how the meeting would proceed for the cases that may not be heard in that they would be continued or tabled to another agreed upon meeting. He also explained the notification process for continued cases.

J. Plourde then moved ahead to the case to be heard.

2. PUBLIC HEARINGS

- a. Case #2022-26 Roger Aveni and Loretta Aveni Trust U/d/t 1/28/2008 for the property located at 119 Union Street, Tax Map 29, Lot 22** are seeking a Variance from the Milford Zoning Ordinance, Article V, Section 5.02.4.A to allow the subdivide/creation of a lot with 50 feet of frontage on Class V Road where 100 feet is required for a property located in Residential 'A' Zoning District

Roger Aveni, applicant, came forward along with Attorney Tom Quinn of Milford as a representative for the applicant. Attorney Quinn started the presentation with a brief history of the property located at 119 Union Street at the intersection of Union St. and Osgood Rd. He said the property has 2 acres and approximately 365 feet of frontage. The owner would like to subdivide the one lot into 3 lots. Lot 1 will house the original home with a detached garage but will not have the required 100 ft. of frontage. The other 2 lots will be improved with single family homes and are in full compliance with the ordinance. Meridian Land Services prepared the site plans. Meridian concluded the driveways for Lot 1 and 2 meet the site distance requirements. All lots will be served with municipal water and sewer.

J. Plourde stated since this is the service being used; the 100 ft. of frontage is the guideline. If not served with municipal water and sewer, then 150 ft. of frontage would be the requirement.

Variance Criteria:

- 1. This will not be contrary to the public interest.**
- 2. The spirit of the Ordinance is observed.**

Attorney Quinn cited cases where criteria for 1 and 2 are looked at as being related and historically have been reviewed together. Therefore, he will treat these 2 as one. He went on to explain Supreme Court Rulings for variance criteria tests. He stated the rulings cited basically boil down to 2 critical criteria which are: granting the variance would not change the character of the neighborhood and/or it would not threaten the public health, safety or welfare.

He then went on to say their position is that this variance will not affect the character of the neighborhood. The lots will be for residential use and this is permitted in the district. There are other homes in this neighborhood with less than 100 ft. of frontage. There will be no threat to the public health, safety or welfare. Meridian did conclude the driveways meet the distance requirement.

J. Plourde asked about the site lines for Lot 1 to ensure they will not cross over into Lot 2. Attorney Quinn stated they would cross over. He explained there will be a protective easement created on Lot 2 and possibly on Lot 1. J. Plourde stated this will need to be a condition for approval.

L. Daley to Attorney Quinn: in regards to the health, safety and welfare does this apply only to Lot 1. Attorney Quinn: yes because this is the only lot that requires a variance.

J. Plourde then brought up the subject of the 2 curb cuts on the property. Owner R. Aveni stated he has used one of these to get in and out of the large field when has gatherings. J. Plourde then explained his concerns about the intersections at this location and the use of another driveway being added to this area. He asked if there had been any discussions with the DPW about using this curb cut. R. Aveni said he has not and Meridian Land Services is handling

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the subdivision. He was not sure if Meridian had discussions with the DPW in regards to the curb cuts. J. Plourde said he would like to have this information even though this is not necessarily part of the variance it does affect the area in regards to safety. J. Plourde said he wants to make sure the DPW will have a say on the matter. Attorney Quinn interjected by saying the DPW issues the driveway permit and it is pursuant to Planning Board supervision. He said he understands the concerns about the intersection. If the Planning Board/DPW is not in agreement with the location, there may be a change to the driveway.

J. Plourde then explained the Zoning Board's position on the driveway. If it appears the driveway will be a threat to the public's health, safety and welfare, then this needs to be considered in the Zoning Board's deliberations regardless of what may or may not happen with the Planning Board/DPW.

Attorney Quinn argued that he understands this position, but the application being reviewed at this meeting does not have anything to do with the driveway. R. Aveni pointed out that this is an issue for the Planning Board. Attorney Quinn continued with another point of view on this subject. He stated if the line for Lot 2 was changed in order to accommodate a frontage of 100 ft. for Lot 1, then the variance would not be needed and the driveways would stay as they are. The decision was made, however, to subdivide the lots in such a way as to be in line with other homes in the neighborhood as well as being lots that were not odd shaped. There was more discussion about this point.

3. Substantial Justice is done.

It is felt this is the best subdivision for the lots. It will not increase density. Given the approach the plan is reasonable and denying it would not benefit the public.

J. Plourde asked if the curb cut is legal. This is not known, but it was created by the Town for work that was needed.

Attorney Quinn continued to make points about the driveway.

L. Daley suggested the Zoning Board write a letter to the Planning Board to express the concerns regarding the curb cut/driveway so the ZBA can then move forward to deliberate on the actual variance. J. Plourde confirmed with L. Daley that he is not suggesting the Zoning Board should wait for the Planning Board to make recommendations, but instead address to the Planning Board the concerns the Zoning Board has regarding the driveway. Further discussion continued regarding the legality of the driveway.

4. The Values of Surrounding Properties will not be diminished.

This is a residential area and that is what these lots will provide. Two houses will be added in a residential zone. It will not increase the density. It will not change the neighborhood. It meets the spirit of the ordinance.

5. Literal Enforcement of the provisions of the Ordinance would result in an unnecessary hardship because:

a. 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 property is unlike any in the neighborhood. It is substantially oversized than the minimum lot size and odd shaped. It has 3 curb cuts that support the plan for 3 lots. Attorney Quinn explained the reasoning for how the subdivision is designed. He also explained how the lots are divided in the area.

J. Plourde then asked how the applicant is not creating their own hardship in regards to lot 1. Attorney Quinn stated that creating your own hardship is a "misnomer". He went on to say that the lot could have been divided into just 2 lots but the decision was made for the 3 lots. He also stated people have a legal right to a variance. He then said since they have chosen to divide the lot as designed, this should not be a reason to deny the variance in that they have the legal right to do so as long as the criteria is met. J. Plourde again asked how the applicant is not creating their own hardship. Attorney Quinn replied that the configuration of the lot creates a hardship. He further explained that with this subdivision, there will be 3 lots created and 2 of the lots will be in full compliance with zoning ordinances. It is only the 1st lot that requires a variance for the 50 ft. frontage and he feels this should not be grounds for denying the variance with this being the decision to create the lots as planned based on the configuration of the original lot. He continued to explain that after dividing the lot into lots 2 and 3, there was only a smaller area left which is lot 1. He again emphasized the lot is different from other lots in the area. He went on to say the purpose of the ordinance is to prevent an increase in density and a stacking of homes (creating space between the structures) as well as maintaining site lines. The variance requested will not create a problem with any of these purposes. He continued to explain why the variance will not increase density, crowd homes together or impose on site lines.

b. The proposed use is a reasonable one because:

A new resident will be built in a residential neighborhood.

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J. Plourde asked if there were any questions before moving ahead to the public portion of the meeting.

D. Sadkowski asked if there were any wetlands involved. It was confirmed there will not be any wet lands. There were no more questions and J. Plourde opened the meeting to the public.

Barry Sprague of 20 King St. stepped forward. He explained the history of the area. He feels adding houses may actually increase property values. He emphasized how nice the property is and how favorable this change will be.

Paul Dargie, Selectman stepped forward and stated he feels the 50 ft. frontage is appropriate for this property and since the house will be set back it will be in a good location on the property. He did state he is not in favor of the driveway location for lot 2 and suggested a shared driveway with lot 1. He directed a comment to J. Plourde to possibly add a comment in the memo to the Planning Board regarding the driveways. Attorney Quinn commented on this by saying they anticipated a shared driveway would be recommended at the Planning Board level and are in full agreement with this idea.

On-line was the resident from 36 King St. He expressed his concern for the lot 2 driveway and then asked about tree lines that are currently there. R. Aveni stated the trees will mostly remain except for one right in the middle of the lot. L. Daley said this is a discussion for the Planning Board. He explained abutters will be notified about this meeting.

M. Thornton asked about a possible condition regarding the tree lines based on the concern of the resident on King St. J. Plourde explained if a condition is not met for whatever reason, then the approval of the variance would be made null and void. Attorney Quinn expressed his concerns about conditions being placed on the variance in deliberations. J. Plourde reassured him any conditions would be discussed prior to deliberations and right now the only condition is in regards to the site lines between lot 1 and 2. The other item discussed, but is not a condition, is the letter from the Zoning Board to the Planning Board expressing concerns about the driveway. J. Plourde confirmed there are no other conditions.

J. Plourde asked if there were any further comments from the public and there were none. He asked the applicant and attorney if they had anything more to add and they did not. He checked with others for questions or comments and there were none.

J. Plourde then closed the public portion of the meeting.

Deliberations:

1. This will not be contrary to the public interest.

2. The spirit of the Ordinance is observed.

M. Thornton: he feels this will not be contrary to the public interest

K. Lagro: an unusually shaped lot; the density will not be impacted; she then explained her opinion that the spirit of the ordinance will be observed by the way the subdivision will be done; it will create lots that are more esthetically pleasing and will not create an issue with lot lines that are odd in shape just to create a lot that is in compliance with the 100 ft. set back.

D. Sadkowski: it is zoned for residential use; it will not affect the density; it will be ok

J. Plourde: he is agreement; house will be setback; cases with different shaped lots with a smaller frontage have been approved in other areas and not just Milford; the site line for lot 1 and 2 will be covered with a condition; it is consistent with the spirit of the ordinance.

J. Plourde confirmed criteria 1 and 2 are being considered together. It is not contrary to the public interest. Lot 1 driveway will be a hazard if the site lines are not corrected but this will be added as a condition during voting.

3. Substantial Justice is done.

K. Lagro: cannot see that justice would not be done for lot 1.

D. Sadkowski: agrees; denying the variance would not change the driveways

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M. Thornton: if you consider this in conjunction with the topography of the land there is nothing that can be done; everything has been done to design the lots as they are planned, therefore, denying the variance or requiring a different design would not do substantial justice.

L. Daley added there are a number of reasons: it will not change the character of the neighborhood, it is a large lot that is conducive to 3 lots and other options would result in difficulties for the applicant.

J. Plourde: agrees

4. The Values of Surrounding Properties will not be diminished.

M. Thornton: there are no abutters stating it will diminish the values

K. Thornton: it will not diminish the values

J. Plourde: driveways will have the correct distance

There was discussion regarding this criteria.

D. Sadkowsi: neighbors have not expressed a concern

J. Plourde: there was one resident who is concerned about trees being cut down; one resident did state the values could be increased; he agrees the variance could be granted without diminishing the value of surrounding properties.

5. Literal Enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

M. Thornton: the shape of the lot and the location present a hardship; the question is raised how this lot could be divided into regularly shaped lots.

J. Plourde: there could be a division that would result in 3 lots with 100 ft. of frontage but this was not an option

K. Lagro: agrees

D. Sadkowski: agrees

J. Plourde: stated there are 2 tests for hardship that should be addressed.

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:

J. Plourde: the purpose of the ordinance is about the frontage which is essentially about density; he feels the relationship test has been satisfied. Discussions continued.

The proposed use is a reasonable one.

J. Plourde: this is about use and not the frontage; single family homes are allowed in this district. He then brought up the site lines. He summarized and reviewed the main points of the previous discussions.

J. Plourde: he feels the applicant has satisfied the 2 criteria tests for hardship.

Voting:

1. This will not be contrary to the public interest.

K. Lagro yes; M. Thornton yes; D. Sadkowski yes; Chair votes yes.

2. The spirit of the Ordinance is observed.

M. Thornton yes; D. Sadkowski yes; K. Lagro yes; Chair votes yes.

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3. Substantial Justice is done.

D. Sadkowski yes; K. Lagro yes; M. Thornton yes; Chair votes yes.

4. The Values of Surrounding Properties will not be diminished.

K. Lagro yes; M. Thornton yes; D. Sadkowski yes; Chair votes yes.

5. Literal Enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

M. Thornton yes; D. Sadkowski yes; K. Lagro yes; Chair votes yes.

J. Plourde stated a vote needs to be taken on a condition for the site line easements as proposed on Exhibits 1 and 2 prepared by Meridian. The condition is "The site line easement would be proposed for the driveways to ensure that appropriate and adequate site lines are provided at the proposed site driveways in accordance with the Town of Milford driveway permit regulations (i.e. nothing can be planted or placed on the proposed site driveways that would obstruct site lines)." He then explained the 3 ft. height limit for vegetation does not apply to this case due to the topography where the proposed driveways will be. For clarification, and for the Zone Board, only Exhibit 1 which is for lot 1 will be considered for the condition. M. Thornton made a motion to approve the condition and D. Sadkowski seconded. All were in favor.

Chair Plourde asked if there is a motion to approve **Case #2022-26 Roger Aveni and Loretta Aveni Trust U/d/t 1/28/2008 for the property located at 119 Union Street, Tax Map 29, Lot 22** are seeking a Variance from the Milford Zoning Ordinance, Article V, Section 5.02.4.A to allow the subdivide/creation a lot with 50 feet of frontage on Class V Road where 100 feet is required for a property located in Residential 'A' Zoning District

L. Daley stated the board should recognize the memo to the Planning Board. A vote was taken and all were in favor.

D. Sadkowski made a motion to approve **Case #2022-26 with the condition** and K. Lagro seconded.

J. Plourde: A motion has been made to approve **Case #2022-26**. Those in favor: K. Lagro yes; M. Thornton yes; D. Sadkowski yes; Chair votes yes.

Chair Plourde stated the criteria for the Variance request had been satisfied and the application approved. There is a 30 day appeal period that can be filed with the Zoning Board.

J. Plourde moved to the next case.

b. Case #2022-27 Stephen Stepanek and SPJ Real Estate Associates, LLC for the property located at Map 25, Lot 119, 1 Hampshire Drive are seeking a Special Exception from the Milford Zoning Ordinance, Article V, Section 5.05.2 to allow a change of use of the existing commercial/industrial building from a manufacturing use to a distribution facility on a property located in the Commercial 'C' Zoning District. (Request for Continuance to November 18, 2022)

J. Plourde to L. Daley a note from the applicant was received 10/26/2022 to continue this case to the November 17, 2022 meeting. M. Thornton made a motion to approve and D. Sadkowski seconded. All were in favor.

3. MEETING MINUTES

9/15/22

In Attendance: K. Lagro, M. Thornton, T. Steele, A. Kokko Chappell, J. Plourde

J. Plourde asked for a motion to approve minutes of September 15, 2022 as amended.

K. Lagro made a motion to approve and M. Thornton seconded.

Those in favor: K. Lagro yes; M. Thornton yes; Chair votes yes.

9/22/22

In Attendance: K. Lagro, M. Thornton, A. Kokko Chappell, J. Dargie, D. Sadkowski, J. Plourde, T. Steel

J. Plourde asked for a motion to approve minutes of September 22, 2022 as amended.

D. Sadkowski made a motion to approve and K. Lagro seconded.

Those in favor: D. Sadkowski yes; K. Lagro yes; M. Thornton yes; Chair votes yes.

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4. OTHER BUSINESS

No further business.

Motion to Adjourn

Chair Plourde asked for a motion to adjourn. M. Thornton made a motion to adjourn and K. Lagro seconded. All Board Members were in agreement. Meeting adjourned.

Motion to Approve: _____

Seconded: _____

Signed _____

Date: _____