

**Town of Milford
Zoning Board of Adjustment
June 1, 2017
Case #2017-12
Ross MacLaren
Variance**

Present: Steven Bonczar, Chair
Jason Plourde, Vice Chair
Joan Dargie
Wade Scott Campbell, Alternate
Robin Lunn, Zoning Administrator

Absent: Michael Thornton
Rob Costantino, Alternate
Tracy Steel, Alternate
Laura Dudziak, Board of Selectmen Representative

Secretary: Peg Ouellette

Ross MacLaren, for property located at 23 North Street, Milford, NH, Tax Map 22, Lot 57, in the Residence A District, is seeking a Variance of the Milford Zoning Ordinances per Article V, Section 5.02.1 to allow the conversion of an existing single family dwelling into a two family dwelling within the existing structure.

MINUTES APPROVED ON JULY 6, 2017

Steven Bonczar, Chair, opened the meeting and introduced the Board members. Wade Scott Campbell was seated as an alternate. S. Bonczar informed all of the procedures of the Board. Board members agreed to table Approval of Minutes to the next regularly scheduled meeting, since there were not enough members currently present who attended the May 18 meeting.

S. Bonczar informed the applicant that since there was not a full five-member Board present, the applicant could choose to continue his case to a future meeting. If he chose to proceed with a four-member board, he would still need to get three affirmative votes for approval. R. MacLaren chose to proceed.

S. Bonczar read the notice of hearing into the record and asked the applicant to state what he planned to do. R. MacLaren said it was a very large house, about 3700 SF living space, not including the parking inside the 36 x 30 barn. One floor below ground and 1 ½ above ground. He wanted to convert to a two-family because his mother had a severe stroke and was left severely disabled. His purpose in buying such a large house was so get him and his parents under one roof. His father was his mother's full-time caregiver, and their current house was old and two stories with very narrow stairs. Mr. McLaren wanted to convert it to up and down units, with his parents living on the first floor and him living on the second. Seemed the best solution for his family.

J. Dargie mentioned an Accessory Dwelling Unit.

R. MacLaren said the home was too large. An ADU was limited to 750 SF. Bottom floor his parents would be living in was about 1000 SF. Upstairs in his area would be about 2200 SF.

J. Dargie said just because of maximum for ADU – reason why making it maximum.

S. Bonczar said cutting 1650 SF was a lot

R. MacLaren said the configuration of the house didn't lend itself to limiting it to 750. Best way to divide it in terms of cost and sensitivity to the structure; it was a historic house.

J. Dargie said other than the limit, it would be an ADU.

R. MacLaren said he will live there. When his parents are no longer there he will have a large house and at some point would like to rent it out. Now would be the time to separate it – dual utilities, separate addresses, etc.

S. Bonczar asked applicant for more information about the neighborhood.

R. MacLaren said he know Res. A was intended to be lesser population density. There were many multi-family homes in the area. At end of the street was a 7-unit house, and next to him there were 22 units. Would not be uncommon. When he bought it, it was a month away from being torn down. He had plans in his hands. As a last resort the owners were going to bulldoze it and put in a multi-unit.

S. Bonczar asked the lot size.

R. MacLaren said 2 or 2 2/3 acres, more or less.

S. Bonczar said he drove by it. It had a quite large driveway area. Not right on the street.

R. MacLaren said there were two, or technically three, driveways, depending on how you wanted to look at it.

J. Plourde said R. MacLaren had mentioned renting the space after his parents got older and the space became available.

R. MacLaren said yes, but he would still be living there. Would be foolish to start over.

J. Dargie said if they voted for it as a two-family, it goes with the property.

J. Plourde asked if they could put a condition on it.

R. MacLaren said he was looking for a two-family to get the services in there right away.

J. Plourde said it could be an ADU except for its size. Since an ADU requires a Special Exception, he would have to go for a variance for the ADU for a larger size, anyway. So, he was looking for a variance one way or another. If they put in that condition that was associated with an ADU where one of the parties had to be the owner he would not have a problem with that.

S. Bonczar thought that would be an undue restriction.

J. Dargie said they had done it before.

S. Bonczar said yes, but didn't think it was fair.

J. Plourde said there were multi-family homes in the area – a building next to him. Right there the beginning of a single-family home area, residential nature.

S. Bonczar said the purpose of the ordinance was for low-density, low-intensity uses. Looking at the area and the plan, he didn't think it changed that much.

J. Plourde agreed. Plenty of parking there. Long drive set back from the road. Didn't see any public gain by denying.

S. Bonczar said they would discuss that once they gathered all information from the applicant. He asked applicant if there was anything he wanted to highlight in the application re the questions answered about the criteria.

R. MacLaren said he lived here eight years. Loves the town. Glad he can make it his permanent home.

S. Bonczar asked if his parents owned this home.

R. MacLaren said it was for sale months from the wrecking ball when it was bought. It was an historic home. It will be restored. It had an interesting history; built by a merchant who had a business in the center of town. He wanted to keep the outside and adapt the inside for their needs.

J. Plourde said one of the hardest criteria was hardship. Asked applicant to talk about the hardship that was bringing him before the Board.

R. MacLaren said given the size of the home and the land – house would have been bulldozed and replaced with four single family homes resulting in greater population and greater traffic. He would be adding two more people and one more car to the road. Didn't think it was high impact, especially with 20-plus units next door. From the outside you won't know it was a two-family. Seems everybody in town has some fond memories attached to the house.

J. Plourde asked if the inside was falling apart.

R. MacLaren said it had lived a hard life. In the 50's a lot of the original details were removed. He wanted to bring it back with unique factors and millwork.

S. Bonczar asked, if this were approved, would it meet all building and fire codes, especially with one unit being on the second floor?

J. Plourde asked, if this were approved by ZBA, would it need to go to the Planning Board?

S. Bonczar didn't think so. Building code and fire safety. Second egress on the second floor.

R. McLaren said it already did.

S. Bonczar said all those boxes would have to be checked off.

W. Campbell said the outside would be the same. Will fit in with the neighborhood. Nothing drastic.

R. MacLaren said the physical appearance won't change. There was a main house, middle section, and a barn, all attached. Middle section was ¾ story on the second floor. Would raise it with a dormer set in the back to accommodate kitchen. When you drive down the street it will not change. Will be a front porch fitting with the time period.

J. Plourde asked if the height of the peak would change.

R. MacLaren said no.

S. Bonczar asked for public comment. None. He closed public comment.

He asked the Bd. for comments or discussion. None. He proceeded to deliberation of the criteria for a variance. He would like to develop findings of fact and their opinions on the zoning and this particular application.

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

J. Dargie – it would not be contrary to the public interest. In the current situation being owner-occupied and being used as an ADU with family in there, didn't think it would be. However, they had put in conditions before. Reason for zoning change was because it was getting too crowded. Intent wasn't to not let more be allowed. Intent was to stop it getting worse. Potential for it being turned into lots. Didn't think it would be contrary if it was owner-occupied.

S. Bonczar disagreed in that you need the condition of an ADU. Didn't think proposal would have an adverse effect on the public interest. When you talk about crowding, talking about a 2-plus acre lot. Some of the other lots in town in Res A you had a lot tighter space. This was a large structure on decent size road. It was his opinion, in this case, it wouldn't go against public interest- and going a little further, the spirit of the ordinance.

J. Plourde said the part standing out for him and question they ask was, did it alter the character of the neighborhood? Didn't think so. Didn't threaten the health, safety or general welfare of the public. Not changing the outside other than raising the roof a little to have a kitchen. Re health and safety, a two-family vs. a one-family of this size. They were not talking about change in traffic pattern or parking issue. Thought this Case satisfied that criteria.

J. Dargie – looking at 15-20 units in future. Her thought was when it became a two-family. Didn't feel it was contrary to the public as is.

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

S. Bonczar said the spirit of the ordinance was mentioned, whether it would conflict with that or not. If you looked at specifics of the property being 2-plus acres and amount of space, driveway, etc. The whole idea, reading what ordinance said about intent. He read from Ordinance Sec. 5.02.0, Intent. He was keying on the word "primarily." Because of lot size and size of the house. Applicant was using existing footprint, not adding on a big addition. Didn't think it was increase in intensity or creating high intensity for that property. Any other members have thoughts on re whether this application either is within the interpretation of spirit of the ordinance?

J. Dargie agreed with him.

W. Campbell agreed.

J. Plourde said on this, his thought was when you were talking about low density and low intensity in the situation in front of them with a single guy with his parents, he didn't see an issue. But, if it was about two families with multiple kids, that was different. If they approved this, condition will stay with the land for 50 years. No issue with the three of them, but could be an issue, as Joan mentioned, the reason they were put into place was to stop that from happening. Would go back to a condition that would be applicable in future, not for current.

S. Bonczar said there was an unspoken condition here. They will approve from single-family to two-family. Not apartment complex. It was a two-acre lot. Someone could say they wanted 20 units in there, if it fit, with parking, etc. He would consider that high intensity use. Adding an apartment or another family, to him, would not violate the spirit and of the ordinance, especially looking at the existing neighborhood.

J. Plourde stated that was why he agreed on the first point. Because it was consistent with other properties. But ordinance was there for a reason – need to contemplate whether to allow the variance or not if it satisfied the criteria. Didn't have a problem in this case.

J. Dargie agreed. Looking at ADU, and it could go up to 25 percent of the whole house as it was before, that would be a different question. As practical matter, the whole situation, if something changed in six months, or two years, and the house was bought by someone else not living in town and not necessarily caring about that, they could split it into another lot. Understood that may not happen but they were making a decision on. In another case, the kennel was going to be it would be fine, but. Steve brought up the future.

S. Bonczar said in his opinion, the consequences to the public were much more detrimental than in this case. Looking at each individual case and weighing separately.

J. Dargie said since she and Jason were talking about a condition, they could make a motion and vote on it.

S. Bonczar said they could.

J. Plourde said if they did and they had a favorable majority vote for a project with a condition placed on it, but then couldn't have a majority because of the condition in place, would we then vote on the case without the condition?

J. Dargie said the condition went with away if the condition didn't get the votes.

J. Plourde asked if the condition went away and the project would go forward.

J. Dargie said yes.

3. Would granting the variance do substantial justice?

S. Bonczar said weighing loss to the individual compared to gain to the public he felt if they denied it he didn't see public gaining much of anything. They were talking about a two-family in an existing structure. Didn't see an issue.

Others all agreed.

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

J. Dargie said there would be no diminished value. Basically it was a situation in same condition or better. Again, could it diminish in 15 to 20 years if it were to be sold as a two-family? But in the current state she didn't think it would.

J. Plourde agreed. What were the options? Will leave it the way it was and it would fall down eventually. On the outside it will stay as it was. Or get a bulldozer and put something else there. Fit the character of the neighborhood. Didn't think it would diminish surrounding property.

W. Campbell agreed.

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.

S. Bonczar said re hardship, asked for comment.

J. Plourde said, looking at from hardship perspective, he completely understood the case. Difference between Res. A and Res. B was that you can have two-family home in Res. B. Res A can only have single-family homes. That was where he was on the fence. Hardship issue would go away in his mind with at least one owner-occupied unit. Re size of the lot and building, what else could be put in there with or without a special exception? There were more intense uses that could be put in – day care (with a special exception), recreational facility, day care home, churches, schools, could be put in Res. A. Trying to find a way to be able to justify the hardship.

S. Bonczar said looking at substantial relationship existing between the general purpose and the application. Purpose in Res A was to provide low-density and low-intensity uses. Didn't think this conflicted with that. Based on lot size and using an existing structure. Not adding to the size or doubling the units. Already multi-family units in the area. Not granting would be a hardship. That being said, he thought talking of putting a condition that unit needed to be owner-occupied would add a hardship. If they pass and allow a two-family that proved there was a hardship and were alleviating that hardship. Putting a condition would be creating hardship for the applicant beyond this approval.

J. Dargie disagreed.

S. Bonczar said he would definitely vote against a condition. Would be putting a hardship on the applicant.

J. Plourde asked, in what way, forcing him to live there?

S. Bonczar said he didn't know the history, but doubted any other piece of property in that area would have that same condition.

J. Dargie said an ADU would have that condition.

S. Bonczar said there weren't there for an ADU. They were saying they would approve it, make you have an ADU, or so to speak. That was his problem. To him the request was pretty clear and keep how they voted based on the wording of the application – a single-family converted to a two-family. Not an ADU.

J. Dargie asked what the hardship was currently.

S. Bonczar didn't see relationship of the ordinance to say that he was not going against spirit of the ordinance where it was low density and low intensity. You could say he already had use of the property, but have to consider there is a definite relationship of granting this or in the spirit of the ordinance.

J. Dargie said hardship was what was specific about this property that made it different.

S. Bonczar said it wasn't diminishment of the property. They were discussing use.

J. Dargie asked what made this special. There were other uses.

S. Bonczar said he could use as a single-family home. No black and white on this case based on the particular road, that it could only be used as a single-family home. He quoted from the criteria is there a fair and substantial relationship between the general public purposes of the ordinance and the specific application to this property?

J. Dargie said that was not hardship.

S. Bonczar said it was. In paragraph i. Has to be taken into consideration. Example, if it was a 20-unit building he would feel there was relationship that it was not in spirit of the ordinance. It was not going to provide more density or more intensity. Looking at property and at the material, he was not trying to squeeze two units onto a ¼ acre lot. And second part was whether it was reasonable. The thought it was, because it won't change the character of the property. Will still be a single building in use as it was. It was off the road with adequate parking. There were other properties in the vicinity that were probably more density than the applicant was asking for. As far as he was concerned, that covered hardship.

J. Plourde said, re hardship, in order for use to be allowed in district not otherwise permitted, applicant needed to prove by demonstrating that the hardship, it was somewhat unique or at least not shared by the majority of those in the district. You already had condos and multi-family homes. This was unique because other uses were allowed or grandfathered in. Hardship shall not be self-created; it was not. It will not alter the character of the neighborhood. All that must be provided to show unnecessary hardship. In this situation, he felt it was shown based on what he read. It was not the layout of the land or topography. It was compared to other uses in the area as far as intensity. It was going to be two-family home. He posed a worst case scenario of a two-family with two tenants with two kids each, with potential in the future for eight cars.

S. Bonczar said they don't have a crystal ball to say that would happen. Based on the property, he didn't think it was an issue. If the facts were different, he might think it was a problem. After looking at the material and driving by to get a better perspective, he could understand it a lot a better. Anything else anyone wanted to add?

Nothing.

S. Bonczar proceeded to go through the criteria for a variance.

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

W. Campbell – yes; J. Dargie – yes; J. Plourde – yes; S. Bonczar - yes

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

J. Plourde – yes; J. Dargie – yes; W. Campbell – yes; S. Bonczar - yes

3. Would granting the variance do substantial justice?

J. Dargie – yes; J. Plourde – yes; W. Campbell – yes; S. Bonczar - yes

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

W. Campbell – yes; J. Plourde – yes; J. Dargie – yes; S. Bonczar - 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.

J. Plourde – yes; W. Campbell – yes; J. Dargie – yes; S. Bonczar - yes

S. Bonczar asked for motion to approve Case #2017-12 for a Variance.

J. Dargie made motion to **approve** Case #2017-12.

J. Plourde seconded the motion.

Final Vote: Yes vote was to approve

W. Campbell – yes

J. Dargie – yes

J. Plourde – yes

S. Bonczar - yes

Case # 2017-12 was unanimously approved.

S. Bonczar informed applicant of approval and of the 30-day appeal period.