Town of Milford
Zoning Board of Adjustment Minutes
May 7, 2015
Case #2015-05
Baldwin Hill Farm with
Mike Foisie
Variance

Present: Zach Tripp, Chairman
Fletcher Seagroves, Vice - Chair
Mike Thornton
Len Harten
Joan Dargie
Katherine Bauer – Board of Selectmen's representative

Secretary: Peg Ouellette

The applicant, Baldwin Hill Farm, along with Mike Foisie, owner of Map 3, Lot 2, located at 0 Whiting Hill Road, in the Residence "R" District, is requesting a Variance from Article V, Section 5.04.4.B, to permit a two family dwelling with less than required acreage and frontage.

Minutes Approved on July 2, 2015

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. Applicant, Mike Foisie, and Ken Clinton of Meridian Land Services, Inc. were present. Kent Clinton came forward to present the case. He said a two family dwelling is allowed by special exception but the area and frontage are the reasons for requesting a variance. Application includes variance criteria as well as a special exception. Property is located in northwest corner of town against town lines of Wilton and Lyndeborough. It is just over 70 acres, with the vast majority in Lyndeborough. The house and barn are there. Mr. Foisie operates a farm primarily on Baldwin Hill and some on Perham Corner Road. About .86 acre is in Milford and 272 ft. frontage. It is a corner of his overall land holding but is held in common with entity that has frontage on Whiting Hill Road. The other abutter is the Town of Wilton which owns a land in Milford to the west associated with an athletic complex. They also own land in Lyndeborough which is part of the ball field complex.
Z. Tripp asked if Lot 3-1 was a Milford lot owned by Wilton.
K. Clinton said it was. There is an aerial image included in the packet that shows lot number for the town GIS. #3-1 is largely encumbered by the edges of the ball field and associated drainage. Wilton property is not inhabited or improved much. On opposite side of street is entrance to what was known Falcon Ridge, a subdivision which has been almost dormant for 20 years or so, with only 4 or 5 houses, well behind what was anticipated. Its outlet is fully constructed paved road. Town of Milford owns some open space. Merrick Land Co. owns vacant lot directly opposite this

parcel. Milford owns open space to the east. From development standpoint the area is extremely vacant and unused. Even Mr. Foisie's parcel is vacant, wooded and has the remains of some type of animal shelter or feed bin that is dilapidated. There is some wire fencing. Surrounding area is sparsely used. There is a lot of vacant area. There is no direct abutter that has any intent of use to be affected by the application. It is noteworthy to call attention to the Lyndeborough parcel that abuts this lot. In the Exhibit it is the reserved area due to a small private burial ground on the property done in 1972. Mr. Foisie's son, Ben tragically passed away and they wanted a private burial site. That area is reserved and set aside and protected.
Z. Tripp asked if that was part of the large lot and if it was on the deed.
K. Clinton said it part of the larger Baldwin Hill property and was not on the deed yet. When you create a private burial ground you have to make a plan to note the location but it is not necessary on the deed. Since applicant owns the farm he wouldn't deed to himself. But it is registered.
Z Tripp said he realized it was technically in Lyndeborough and not Milford's jurisdiction, but he was curious about it.
K. Clinton said when they salvaged reserve area they had no intention or knowledge to develop this small area. But they would like to honor his son's memory with alternate housing that would aid young single adults in taking the next step in their lives. It is a bit of a philanthropic effort but application must stand on its own merit, without how they might use the property for the success of young adults. The reserve area, when talking about there is a special exception to allow a two family and the requirement being 300 ft of frontage and 4 acres, they set aside for this area exceeds those requirements. He wanted to walk through those, but asked for any further questions from the Board.
L. Harten asked if there was intent to make up the shortfall in the lot size in the application, Lot 3-2, from the reserved area.
K. Clinton said in part. The nature of 3-2 and its ability to receive improvements, i.e. septic system, driveway, etc, will be constructed and maintained on Lot 3-2. In Milford but as further protection the frontage and reserved area could help to qualify it regardless. He has done other subdivisions where a portion of the property in one town but zoning requirements are made up by land owned by the same entity in another town. This follows that same idea.
L. Harten asked how it would be accomplished. Would they re-deed the property with a restriction?
K. Clinton said it is an easement. If they recorded a plan based on approval and issuance of the variance it would be recorded at the registry that memorializes the intent to keep that area free from building and it is relied upon by Lot 3-2 to account for frontage of the area.
F. Seagroves said he couldn't find anything to explain what a reserved area was.
K. Clinton said it is technically not an easement at this point; the owner would be deeding an easement to himself. It is more a restricted or reserve area. Applicant has no intention of anything happening outside the area. This is a private family plot. No question it will remain as is.
F. Seagroves asked if Lot 3-2 is part of the entire 70 acres.
K. Clinton said yes, the property is under one common ownership.
F. Seagroves they are talking about subdividing that onto this easement.
K. Clinton said it is by default by the town line.
Z. Tripp said even though this is all the same ownership the reserve area is part of the 251-3 lot in Lyndeborough and the .68 acres, Lot 3-2 is a separate individual lot in Milford. The owners could separate it, even though it is one big lot, they could separate it and sell it at some point. Even though he is saying it is part of one big tract, it happens to be the same owner of lots next to each other.

K. Clinton said that was correct. That was why he had said that even though the applicants have specific intent of a person or persons that would use this home, that is why it has to stand on its own merit, because it could be separated in the future from the larger land holding. If it was ever sold in the future it has to stand on its own merit and be protected by a recorded plan that would memorialize this is a reserve area.
J. Dargie asked if building a single family home would require a variance.
K. Clinton said no, there is a sufficient area in setbacks. It is a pre-existing non-conforming lot.
J. Dargie asked if there was a reason not to do a single family.
K. Clinton didn't know.
Z. Tripp said he believed they would still need a variance for a single family.
K. Clinton believed it was a pre-existing non-conforming. They did a survey and had wetland scientists go out. It is suitable for 4-bedroom leach field and septic design. Current proposal is that each of the units would be one bedroom.
Z. Tripp asked how finalized are the units drawn on the plan. Is it a placeholder?
K. Clinton said it is a bit of a placeholder. These are smaller units intended for one adult.
Z. Tripp assumed they have drawings for 2 bedroom septic.
K. Clinton said 4 bedroom septic. It is a 2 bedroom building permit at the DES doesn't recognize 2 bedroom duplexes. Their minimum is 4 bedrooms and requires you to over design. Their design had to be 4 bedrooms, no different than if you had 4 bedroom house.
Z. Tripp asked how many square feet for a 4 bedroom.
M. Foisie said the intent is to build two 600-700 SF units, single bedroom.
Z. Tripp asked for any other question.
L. Harten asked if the reserve area is actually part of the same tract as Lot 3-2 except in two different towns.
K. Clinton said yes.
J. Dargie asked if they were two different lots.
K. Clinton said by virtue of the town line they are treated by each town as individual separate lots.
Z. Tripp asked how the whole large lot came to be and .68 acres property in Milford.
K. Clinton said the history before zoning and it was a larger land holding for farms. The Hampshire Farms owned a large acreage. Because of topography different areas were used differently. Some parcels were eventually sold off and larger land holding got smaller.
Z. Tripp rephrased his question. Did the owner buy this as one lot and it got divided later? Or did the owner have to buy one lot in Lyndeborough and then buy in Milford?
K. Clinton and M. Foisie stated it was one deed with descriptions of the two properties.
J. Dargie asked why since most of the land is in Lyndeborough the 2 family couldn't be there.
K. Clinton said to the east of the private burial ground the driveway is extremely steep. Drive is not suitable to build on. It is not developable because it can't meet today's drive or roadway standards. It is not a buildable area; Lot 3-2 is.
L. Harten asked if the Foisie's were going to re-deed the reserved area to themselves to make up the shortfall in the lot under discussion.
K. Clinton said instead of re-deeding or deeding it would be a plan recorded that explains that in addition to this being reserved to protect the burial plot it is also recognizes that protection benefits Lot 3-2 and the two family size and acreage and frontage requirements. It would not only benefit the private burial ground, it also benefits Lot 3-2 whoever owns it.
L. Harten asked how they would accomplish that.
K. Clinton said the closest he could say is that in addition to the plan they file an affidavit with the plan saying the owners are recording the plan with purpose and intent to accomplish these goals,

vs. deeding an easement to themselves. That would accomplish it. It is in the record, and memorializes any restriction.
J. Dargie said if Lot 3-2 were sold by itself, which could happen, it will have no claim to the reserved land behind. There won't be any easement.
K. Clinton said that is probably when an easement would be recorded. The already recorded plan would be referred to and, if required, an affidavit to clarify. The plan doesn't have the explanation, the affidavit would. It would say conveyed this lot with the benefit of an easement reserve area shown on plan in the Registry of Deeds for the purpose of allowing up to 4 acres greater than the 300 ft. requirement of frontage.
Z. Tripp asked for any further questions from the Board. There were none. He opened the meeting for public comment. There were none. He closed the public comment portion of the meeting.
K. Clinton read the application into the record. (Additional comments are in brackets).

1. Granting the variance would not be contrary to the public interest because:
Not only does the subject lot have sufficient are and frontage to accommodate the potential duplex and improvements, but the inclusion of the abutting Reserve Area provides for the excess area and frontage for compliance with the requirements. Therefore it does not unduly and to a marked degree violate the basic objectives of the zoning ordinance. [Looking at Lot 3-2 as stand-alone is it reasonable to have a duplex; can it accommodate drive, septic and a well, small yard, things it would need to stand on its own. Everything needed to be fully functioning duplex-site loading of the property, the soil conditions, location of the well- can fit on Lot 3-2 now without the reserve being factored in.]

2. The use is not contrary to the spirit of the ordinance because:
The lot area & frontage are more than ample for the potential duplex and improvements, especially when considered with the adjacent Reserve Area. The suitability of the property is depicted on our concept, which also illustrates that the health, safety and welfare of both the neighboring properties and the general public are not adversely affected or harmed due to the nature of their ownership and uses. [Abutting uses ownership is fairly unique where property has two different towns owning properties that are not for residential development or other uses. On the Milford side it is open space. In Wilton it is athletic field. Mr. Foisie's land acts as a further buffer.]

3. Granting the variance would do substantial justice because:
There is no apparent gain to the general public which would outweigh the loss to the applicant.

4. The proposed use would not diminish surrounding property values:
The potential duplex and improvements will not adversely affect the neighboring uses any more than the acceptable uses listed in section 5.04.1 and those other acceptable uses by special exception or conditional use permit as listed in section 5.04.2. This is particularly true given the nature of the abutting ownership and the varied/limited uses. [There is a fairly long list of allowable uses that residents can do by right. If you consider as a single family home with 4 children and as children in a four bedroom home grown up and there are multiple cars in the driveway, etc. this is likely to be far less impact than a four bedroom home on a residential lot.]

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:

Specific characteristics of the subject property are shown to be suitable to accommodate the potential duplex and improvements in an environmentally sound manner, especially when considering the adjacent Reserve Area and the neighborhood density relative to the abutting uses is protected. Given the special conditions of the property relative to the proposed use, the purpose of the ordinance is not frustrated. [Getting to the density question, the closest single family home is beyond the abutter notification on the south side of Whiting Hill. It is a nicely kept house and yard. Next is a manufactured home to the east beyond Mr. Foisie's Lyndeborough property which acts as a buffer. If you are standing on this land you cannot see the next house. Therefore, with the restriction on Mr. Foisie's Lyndeborough parcel, the use of the Wilton parcel, the protection of the Milford open space, this will not in a duplex sense or two family sense increase the density of this neighborhood where it would be noticed as affecting the neighbor and their enjoyment and use of their property.]

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

The concept clearly shows that the property has suitable area and frontage to construct the potential duplex and improvements, especially when considering the adjacent Reserved Area under common ownership. The proposed use on this particular property will not alter the essential character of the neighborhood.

There being no further questions from the board, K. Clinton offered to read through the special exception requirements if the board felt it necessary.
Z. Tripp said they were not using that part of the criteria. He already read that.
K. Clinton felt it was important to include them in the application, by way of further background.
F. Seagroves said the problem was the kitchen; if there were no second kitchen it wouldn't be a duplex.
K. Clinton agreed. In their inspection of Lot 3-2 it has a site loading capacity, without considering the Reserve Area, for this particular use and it goes to the limited nature of this two family. It is a two family, but it is not multiple bedrooms on each side. And as a further protection is the reserve area next to it.
Z. Tripp stated there was no correspondence received on this case.
L. Harten asked if lot 3-2 could accommodate septic, driveway, the open space. Have they run it by the Building and Planning?
K. Clinton said he has discussed it with Bill Parker. He was their first stop. Absent any memo, the response was favorable.
Z. Tripp if they said it was feasible.
K. Clinton said yes. He explained what they were trying to do. Bigger question in his administrative decision, even though lot 3-2 could support this two family, Bill Parker felt a variance was needed and important that they stress the nature of the abutting land with burial ground and that could be incorporated in any decision that the Board felt and if they wanted a condition that the plan gets recorded and an affidavit along with it stating the purpose, that would be important.
L. Harten asked if he was saying the Bill Parker recognized this as a buildable lot for a duplex other than the frontage and acreage.
K. Clinton said nothing came up in the discussion other than that.
F. Seagroves asked if there was no structure on the property.
K. Clinton said other than the animal bin or structure, nothing. He said you wouldn't notice, there is a slight driveway cut, much older. As people drive by, they wouldn't notice it.
Z. Tripp said as a matter of record the drive, septic and the two duplexes sit within the setbacks.

K. Clinton said yes, and they will have to get formal approval of septic design, and driveway permit. They have to go through all those things. This variance will just allow them to move forward.

The board proceeded to discussion of the criteria for a variance.

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

F. Seagroves – yes, he doesn't see public benefit if variance was not granted. He can see no harm [to granting].

L. Harten agreed. Believes if it was granted it would not be contrary to the public interest. Feels they should, if approved, place a condition on approval. He just wants to make sure the two lots are deeded together to make up the shortfall and he is not sure how to word it.

Z. Tripp suggested discussing the five criteria and then discusses any conditions.

J. Dargie – leaning yes, not sure of the activity on that road and the other driveway but that could probably be covered under other questions.

M. Thornton – yes. It is not contrary to the public interest because it is very small in scope and situated away from any, that he can see, traffic area that would be of import to the towns.

Z. Tripp – yes. Even though a two family Residence R would increase the density beyond the desired density, given the location of the parcel he doesn't believe it would alter the essential character of the neighborhood. There is already a park to the west and the reserve area in the adjacent town to the east. He doesn't think a two family in this size lot would change the character of the neighborhood.

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

J. Dargie – it is a big difference. It is basically a half acre and the ordinance is 4 acres. Doesn't know if the spirit – it was mentioned it was not in excess of what is required. There is a big difference between .68 acre and 4 acres. Considering the lot 3-2 would stand on its own and could be sold as its own, she feels it kind of goes against the ordinance because they can't guarantee that the Lyndeborough property stays with the Milford property.

M. Thornton – yes. It could be granted without violating the spirit of the ordinance because it is small, insular and not repeatable in the town's areas and it is specific in scope that would limit anything in the future, especially as it would be deeded in the future.

L. Harten believes it could be granted without violating the spirit of the ordinance. Obviously it is undersized lot without required frontage but as discussed everything seems to sit on this land properly without causing problems and getting back to the discussion in the criteria it refers to health, safety and general welfare of the community and he doesn't believe if this was granted it would have any effect on those.

F. Seagroves agreed. Len stated the handbook mentions health, safety and general welfare and talks about effect of the variance on the master plan. He doesn't think it would. Again I am still talking about with the reserve area. He agrees with Len. As long as they can put those two parcels together they have four acres and frontage.

Z. Tripp – echoing some of Joan's comments, the spirit of the Residence R, read earlier are low density and agricultural uses. Ordinance says two family is allowed by special exception and specifically states four acres, which is a good size parcel. Going to Point 6.8, it is still within the spirit. What makes it tricky is most of the surrounding lots are not in Milford. It is tucked away in the corner. Surrounding Milford lot is owned by a different town, which is a ball field. Inherently, low density and the the adjacent lot in the next town. They can talk about frustrating the purpose of the ordinance later but this lot in this location with the lots around it that area still stays low density. It is 1400 SF total. Not a large

building. He doesn't think it will threaten health, safety and general welfare. They could approve it without violating the spirit.

3. Would granting the variance do substantial justice?

F. Seagroves – yes. He doesn't see the public would gain anything by denying. The individual loses more.

L. Harten agreed. If they grant this it would do substantial justice. If not granted, the loss to the applicant would be greater than gain to the general public.

J. Dargie - What she is grappling with is there is a nonconforming lot already approved. She thinks the lot could be used in a nonconforming use even though she understands it could be used as a larger single family. She doesn't see loss to the individual. Only gain to the public is trying to keep low density. It could be sold to somebody else and buyer could add bedrooms and it would have to have septic for a larger. Her answer is no.

M. Thornton – it would do substantial justice. He can't conceive of something more appropriate and in consideration of the different spokes of the wheel of this particular property.

Z. Tripp – Usually this is an easier question. The question is whether public would gain if they deny. What is the alternative? The alternative is a single family house on that lot. Not sure if it would be grandfathered to allow. Regardless, the alternative is a single family, per the ordinance. Would public gain having a single family house versus two 1400 SF duplex? He doesn't think public would gain with single family. He doesn't think that gain outweighs loss to the applicant. Board would probably discuss condition to limit size of the duplex to address density concerns to Joan's comment that if it is sold they could put a second floor on. He is using the rationale of a smaller unit to answer this question. He would feel comfortable with a condition re future size.

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

J. Dargie – It could be granted without diminishing the value of abutting property since there is not much for abutting property.

M. Thornton – There's not much around, so yes.

L. Harten agreed. If they grant it, there would be no diminishment of abutting property values. Lots are all rural and seem to fit the area. Property under discussion would fit in nicely with what is existing.

F. Seagroves – yes. Doesn't think it would affect abutting property. There is a ball filed on one side; it wouldn't affect that. Doesn't see that anything they would be building after would affect it.

Z. Tripp agreed. Driving up and down that road, the houses are fairly well separated. Having duplexes this size would not affect property up and down the street. Across Whiting Hill Rd. is empty Falcon Ridge subdivision. Even if that is built out, doesn't believe it would impact that.

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, addressing B, property is unique .68 acres, you need 2 acres for single family and they have less than an acre and four acres for a duplex. As he stated, except for the second kitchen for the duplex, they would have a single family house. The other condition is that property is in Milford and rest is in another town, making it unique. Definitely this is unique property. He sees a hardship. As Len stated, they need to put conditions on it, but he would say yes under special conditions.

Z. Tripp said to summarize, F. Seagroves believes it is unnecessary hardship using criteria for B and possible conditions for size of it assuming they approve some conditions? F. Seagroves said yes. Z. Tripp asked if they couldn't establish fair and substantial relationship which one of those they don't meet. F. Seagroves said proposed use is a reasonable one. Z. Tripp asked if he didn't think there is fair and substantial relationship. F. Seagroves said that was correct.

L. Harten believes if it was denied it would result in unnecessary hardship. No fair and substantial relationship between the general public purposes of the ordinance and the specific application they are discussing. Re Aii, believes proposed use as presented is a reasonable one. Certainly a hardship because of the shape of property under discussion. It is to be distinguished from others in the area. If they talked about strict conformance with the ordinance. Believes a variance is necessary to enable applicant to have reasonable use of his property.

J. Dargie – No, because she doesn't see hardship because they could build a single family home which would be more valuable down the line. It may help when Falcon Ridge comes back and upgrade value of the properties in that area. She doesn't find fair and substantial relationship between general public purposes. There is something to be said to be building to add to the neighborhood with higher value houses. Re Aii, A being not established, an unnecessary hardship exists owing to special conditions that they can't follow the ordinance. However, we know they have a grandfathered lot for a single family home.

M. Thornton – yes. No fair and substantial relationship exists between the general public purposes and the ordinance provisions, and the use is the most reasonable one that he's heard in an area that small and congested which would limit the number of people living there and with the constraint of no second floor at any time in the future. 700 SF period, no more at all. His answer is yes to Ai, Aii, and B.

Z. Tripp. He struggled with this. Tough question for the exact point J. Dargie made. Whether the applicant has reasonable use of the property without the variance. He looked at it as along the lines of what is unique about the property and that it is .86 acres in the Residence R. That is unique. Even a single family would need some sort of variance. Applicant stated it is grandfathered, but it would need a variance. It is not size that makes it unique; it is size and proposed use as small duplex that would be equivalent to a single family house. It is also unique that it is surrounded by other towns, with Milford lot owned by another town. Lot to east is owned by a different town. Given the location, surrounded by a ball park and lots owned by another town, it could be granted without frustrating the purpose of the ordinance because density of the Milford lot would be similar to accepted use of a single family house. They are not frustrating the purpose any greater by allowing duplex. He doesn't think denying would promote valid public purpose, Whether the use is

a reasonable one, the applicant did nice job of limiting size of the duplex and showed it is feasible to place everything within the setbacks, septic. Etc. Denial would be unnecessary hardship because they have small lot in Residence R District and proposed use of two small duplexes would not increase density any more than a large single family house.

Z. Tripp asked about discussing conditions.

M. Thornton moved that the two single family homes be limited to single floor and 700 SF in perpetuity. It was pointed out that they were discussing duplexes, not two single family houses. Z. Tripp rephrased to say the duplex would be limited to two units each of maximum 700 SF.

L. Harten seconded the motion.

Vote on condition that if approved, the duplex would be limited to two units, each of a maximum of 700 square feet:

F. Seagroves – yes; L. Harten – yes; J. Dargie – no; M. Thornton – yes; Z. Tripp – yes

Condition Approved, 4 to 1.

L. Harten said he wasn't sure how to best word it, but wanted to make sure the lot under discussion, the applicant is tied into the Reserve.

Z. Tripp asked K. Clinton if the proper phrase would be that the board wants to have a condition they put an easement on that lot that satisfies the four acres easement. Is easement the right word?

K. Clinton recommended, if he was to make a motion, that prior to issuance of a certificate of occupancy a plan be recorded at the registry depicting the reserve are identifying its purpose specifically, either on the face of the plan or through an affidavit recorded at the registry specifying it is to be kept in its state other than from a private burial ground for four acre requirement and 300 ft. frontage requirement of the two family as in the ordinance or something to that effect.

Board agreed that was well worded.

K. Clinton said it's a public record, and minutes, video and audio, and he knows what's appropriate with what he said, he would be willing to insure to Community Development that it is reflected if it's granted.

F. Seagroves doesn't think applicant is going to sell that portion and build houses on it.

M. Foisie, the applicant, asked to speak. He said he will be buried next to his son and his wife. Most likely occurrence is that his surviving children would sell the property at which time that property would be deeded separately for his children. His plan is to have an annuity to have so it will stay as it is as a family burial ground. There is little chance that the property he owns would ever be conveyed to a non family member as a private burial ground. K. Clinton's proposal for easement is perfectly satisfactory to him and he doesn't see need for concern.

L. Harten said there are certain restrictions with a private burial ground on the reserved piece of land.

M. Foisie agreed. There are wetlands restrictions and distances from dwellings, etc. that the state statute speaks to with respect to private burial grounds. He will be buried right next to his son.

Z. Tripp wondered if, instead of the board proposing proper language to do what they are going to do from land use, is there a motion that says their intent and let the Community Development office and Town of Lyndeborough ultimately figure out the logistics to execute what that motion is.

L. Harten said that sounded reasonable.

Z. Tripp suggested motion that if it is approved it is conditional that the family burial ground on lot 251-3 in Lyndeborough shall be used maintain open space and frontage to the North and Northeast of Milford in order to maintain a minimum of four acres and 300 ft. of frontage on Whiting Hill Road for Map 3 Lot 2. He asked the board if that was reasonable, without getting into mechanics.

Z. Tripp then repeated and wrote the motion to say that the family burial ground on lot 251-3 in Lyndeborough shall be used maintain open space and frontage to the North and Northeast of

Milford in order to maintain a minimum of four acres and 300 ft. of frontage on Whiting Hill Road for Map 3 Lot 2.
L. Harten proposed that condition.
F. Seagroves seconded.
Vote on condition:
L. Harten – yes; F. Seagroves – yes; J. Dargie – no; M. Thornton – yes; Z. Tripp – yes.
Condition approved 4 to 1.
Z. Tripp proceeded to voting on the criteria.

1. Would granting the variance not be contrary to the public interest?
L. Harten – yes; F. Seagroves – yes; J. Dargie – yes; M. Thornton – yes; Z. Tripp - yes
2. Could the variance be granted without violating the spirit of the ordinance?
M. Thornton – yes; L. Harten – yes; J. Dargie – no; F. Seagroves – yes; Z. Tripp - yes
3. Would granting the variance do substantial justice?
L. Harten – yes; J. Dargie – no; F. Seagroves – yes; M. Thornton – yes; Z. Tripp - yes
4. Could the variance be granted without diminishing the value of abutting property?
J. Dargie – no; F. Seagroves – yes; M. Thornton – yes; L. Harten – 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 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 – yes; M. Thornton – yes; L. Harten – yes; J. Dargie – yes; Z. Tripp – yes

Z. Tripp asked if there was a motion to approve case # 2015-05, a request for a variance, with conditions.

F. Seagroves made the motion to approve Case #2015-05 with conditions.
L. Harten seconded the motion.

Final Vote:
F. Seagroves – yes
L. Harten – yes
M. Thornton – yes
J. Dargie – no
Z. Tripp - yes

Case #2015-05 was approved by a 4 to 1 vote.
Z. Tripp reminded the applicant of the thirty (30) day appeal period.