Town of Milford
Zoning Board of Adjustment Minutes
June 16, 2016
Case #2016-14
Robert & Michele Moulton
Variance

Present: Kevin Johnson, Chairman
Michael Thornton
Jason Plourde
Joan Dargie, Alternate
Len Harten, Alternate
Rob Constantino, Alternate (not voting)

Robin Lunn, Zoning Administrator (non-voting)

Absent: Kathy Bauer, Board of Selectmen Representative

Secretary: Peg Ouellette

The applicants, Robert & Michele Moulton for the property located at 231 Melendy Road, Milford, NH, Tax Map 52, Lot 4, Variance request from the Milford Zoning Ordinance, Article V, Section 5.04.4.A to subdivide a lot consisting of 2.3 acres of land and 50 feet of frontage where 200 feet is required in the Resident "R" Zoning District.

Motion to Approve:

Seconded:

Signed:

Date: 8/4/16

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 then introduced the Board. He continued by informing all of the procedures of the Board
List of abutters was read. Abutters present: Jon Prieskett of 182 Melendy Rd.; Pauline C. Boggis of 217 Melendy Rd; Sandra Frades of 203 Melendy Rd; Olav Nieurweijaar of 249 Melendy Rd.
Applicant Robert Moulton was present. Attorney Thomas Quinn represented the applicant.
Attorney Quinn stated he was representing a group of applicants. Moulton is lead applicant because somebody had to be listed on the application. Unless the board needed all applicants to be there, they would proceed with Mr. Moulton. K. Johnson agreed.
T. Quinn stated all applicants are listed on the application.
K. Johnson said the list of abutters read was not just the abutters, but also the applicants. He asked if anyone was there as an abutter and not an applicant. One person.
T. Quinn said applicants are owners of property at 231 Melendy Rd. Lot 4, Map 52 of Tax Map. In Res. R district, Approximately 40 acres. Meets or exceeds all dimensional requirements of district. Minimum lot size is 2 acres and 200 ft. frontage. Applicants want to keep bulk of property as open space and proposed to be dedicated to conservation. Not decided yet whether to put a deed or easement. In the process. Met with the Conservation Commission. Different attorney handling that. Plan is to dedicate balance of land after subdivision. Two lots to conservation, about 30 acres. First parcel on north end of the property is fully compliant with zoning. Adequate lot size, 2.9 acres and couple of hundred ft. frontage. Plan submitted with the application which showed more than needed and caused confusion in the Planning office.
K. Johnson said, as to division of the lot line, which ZBA has nothing to do with.
T. Quinn agreed. Office uncomfortable it shows that. Position was revising lot lines of those other lots without a variance violated the ordinance. He thought you could make a nonconforming lot less more nonconforming without a variance. Town Counsel Drescher said the Planning Bd cannot approve a lot that doesn't comply with zoning, so he had a new exhibit prepared, which he passed out to the Board. Showing the same application for 50 ft. frontage with 2.3 acres but not anticipating revision of the other lot. Had a separate plan that did that, which he would show later. Important to keep in mind there isn't anything in this plan re lot in question that is different from the previous plan. It is other lots that change.
K. Johnson said the only thing shown is the proposed new lot line that would affect area placed in conservation.
T. Quinn said that was correct. Has plan showing that. First parcel to the north is compliant. Second lot is the one in question. Would have 50 ft. frontage, 2.3 acres. Doesn't meet the 200 ft. requirement.
K. Johnson said in looking at Lot 52-5 it appears to be 154 ft. frontage? 52-6 appears to be about 100 ft. frontage?
T. Quinn said a little more.
K. Johnson said 52-7 is 100 ft.
T. Quinn said about 108. It is intention of applicant to designate remaining portion of property to conservation. Have met with Conservation Commission. Conservation Comm. interest in it and are moving forward. Believes they submitted a memo to the effect that they are interested in it and support the application for that reason. In 1975 group of individuals who owned at that time 49 acres of land subdivided property and created a couple of building lots and remainder parcel of 38 acres. Labeled it Melendy Country. It was fully compliant with zoning at that time. In 1979 they eliminated two lots created a larger lot 3-1 and created new lot 7 which is easternmost lot. As a result of that re-subdivision, no additional lots were created. They combined two and created another one. It remained the 6 lots. Later made technical adjustment to boundaries of lot 7 but didn't increase the number of lots. Important to note that the remainder parcel 5-2-4 is in common ownership as open space but not in the sense we talk about it today. It is not owned as fractional shares by everybody who owns lot in that subdivision, only some of the owners. It is not open space in that it is not restricted in any way. Today open space would be. It is not restricted in its potential development. Plan is to subdivide the two lots. Because of inadequate frontage they need a variance.

[NOTE: Following is narrative given by T. Quinn in response to questions on application. He did not read actual application into the record. Text of actual application follows after his narrative]
RSA 534 73 1b provides that "the ZBA may authorize upon appeal in specific cases a variance from the terms of the zoning ordinanceif: 1) It is not 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 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, denial of the Variance would result in unnecessary hardship because: i. No fair and substantial relationship exists between the general public purposes of the ordinance provisions and the specific application of that provision to the property; ii The proposed use is a reasonable one. B. If the criteria in paragraph 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 Paragraph 5 shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, dimensional or other limitation on the permitted use or any other requirement of the ordinance."
He continued by saying, the requirement not to be contrary to the public interest is related to the requirement that it be consistent with the spirit of the ordinance and the two have been treated together for years by the state Supreme Court. Any variance would be contrary to public interest to some degree. Supreme Court has instructed that to determine whether a requested variance is not contrary to the public interest and is consistent with the spirit of the ordinance, the ZBA must determine whether granting would unduly and to a marked degree conflict with the ordinance such that it violates its objectives. Supreme Court has two tests: 1. Alter the essential character of the neighborhood; 2. Granting would threaten public health, safety and welfare. In this case, it would not unduly and to a marked degree conflict with the ordinance such that it violates its basic objectives because it would neither alter the essential character nor threaten public health, safety or welfare. Granting the variance would observe the spirit of the ordinance. Article V, Sec. 5.04.0 provides intent of Res. R district is to provide low density and other residential and agricultural land uses and other compatible land uses sensitive to the rural character and environmental constraints existing in the district. Toward that end Sec. 5.04.4a requires two acres minimum lot size and frontage on a Class 5 or better road. Remainder parcel is approximately 38 acres. One lot approximately 2.9 acres with 200-250 ft frontage on Melendy Rd. Second lot proposed to be about 2.3 acres. While 50 ft does not meet the requirements, creation of two building lots from a lot of 38 acres is consistent with intent to provide low-density residential development and in no way violates the basic objectives of the zoning ordinance. 50 ft. all that is required to create an entire new road. Character of neighborhood consists of many lots of from 1 to 2 acres. There are lots in the immediate vicinity with less than 2 acres and several with less than 200 ft frontage. Intent of applicant is to expand three existing lots, 52-7, 52-6, and 52-5. He passed out plan; keeping it separate because he didn't want to implicate it as part of the variance. Can see in order to do what they plan as shown on this plan, would need a variance. Purpose of showing it was to see what actual goal is for the project and how total project is consistent with the intent of the ordinance. Three lots nonconforming will be made conforming. Increase slightly in size to have 2 acres and 200 ft. frontage.
J. Dargie asked if all three would have 200 ft.
T. Quinn said yes. That leaves approximately 30 acres to be dedicated to conservation. The subject property – the 30 remaining acres – abuts the rail trail. Access from that hiking trail will be immediately into this property. One of the reasons these other lots are being modified because trying to close up frontage on Melendy Rd so that access to conservation land will be from rail trail and not from the road so you won't have cars stopping at the road and cutting through, which they can do now. There is an existing trail on private property that leads to that back land. Intent of closing it up is so access will be to the rail trail.
J Dargie asked if this plan was different from the original.

T. Quinn said it was not different from the one he gave them tonight, but different from the original. ((K. Johnson said dated April 21) Because that plan increased size but not making them fully compliant. This plan would make them fully compliant.
J. Plourde said there were two plans handed out tonight. The most recent one is all conforming? The original one handed out tonight. Which one are they looking at approving?
K. Johnson said they were ignoring the one that was in the original packet.
J. Plourde said now they have two others.
K. Johnson said looking at one to approve nonconforming. The other is concept to what they want to do to remainder of it and give the boundaries of the property that will be subject to conservation easement.
M. Thornton asked why not do all at once?
J. Dargie said others will be conforming.
K. Johnson said that was a procedural issue between the ZBA and Planning Bd. Before they can go to the Planning Bd with Part B they have to come to ZBA with Part A.
J. Plourde understood.
T. Quinn said only reason getting into discussion of lot configuration to the south of property and the conservation easement is because he wants the Board to understand this one lot of 200 ft. of frontage and 2 acres is part of a larger plan which is completely consistent with objectives of Res R. Rather than trying to develop 30 acres or 40-acre property. Created two lots; one requires a variance. Expanding the other lot dedicating the rest of the property to conservation. This is it. When done here tonight this property cannot be developed further because there won't be any more frontage. The frontage will have been absorbed into existing lots, and remainder will be in conservation.
L. Harten corrected him, that he mentioned Armory Rd. T. Quinn said he meant Melendy.
L. Harten asked where rail trail is located.
T. Quinn said on south end of property. It was pointed out. Lot 52-97.
J. Dargie asked if that was why frontage was left at either end.
R. Constantino said it was off the trail.
T. Quinn agreed.
R. Moulton said they were talking about doing parking there.
J. Dargie said it appeared there were houses on all except 52-5. Asked reason for configuration of 52-5.
T/ Quinn said that was correct. By adding parcel A to 52-5 they close that frontage. If they tried to put lot there instead of whether it is they would lose advantage of access already in place, and that parcel A is very close to the curb in the road and they would adding another driveway. To avoid that, they pushed it back up the road. Has sight distances. Had Meridian check it. Required to have 100 ft in each direction.
J. Dargie asked if the back proposed lot line 52-5 went back further to gain the acreage and the left hand side went over, is there reason for not making 75 ft. or sharing frontage to make that more conforming.
T. Quinn said she meant shifting the whole thing over.
J. Dargie said basically have 250 ft. or more. Any reason why they didn't try to get more frontage for Lot 1 and make next lot larger by moving the line further back. Could expand acreage. Could do that by going back further.
R. Moulton said current owners of 50-5 would like to keep it as is. Where it drops off, if they wanted to have a walk-out basement.
K. Johnson said topography features don't show on plan. He assumed it was a Catch 22, using existing 52-5 so they didn't have to get 52-5 changed before going to the Planning Bd.
J. Dargie said asked where driveway would be on 52-5.
R. Moulton and T. Quinn said it was undetermined at this time.
J. Plourde asked if there was no intent right now, if this project moves forward, to construct a drive on Lot 1 even though it has 50 ft. frontage?
T. Quinn said there is an existing drive there now.
J. Plourde said as far as the subdivision.
T. Quinnn said drive will serve the one lot; that is there will be driveway to the back.
J. Plourde said they were looking to combine different lots to the south?

T. Quinn said Lot 1 will always be its own lot. What is being combined, Lot 52-5 and Parcel A will be combined as one lot. Lot A will stay exactly as shown on the first plan he handed out.
J. Dargie said that was confusing the first time they saw this, because it said the proposed lot line. When she was looking at proposed lot she was taking all the gold lines and seeing a green line in the middle, not understanding that it was multiple lots. The proposed lot line of the multiple lots.
T. Quinn said for purposes of Lot 1, it is the first plan. A little dogleg. That is not going to change.
L. Harten asked if Lot 1 had a drive, and what is its width.
T. Quinn said yes, 12 ft.
L. Harten said if this is approved there will be an updated drive?
T. Quinn said they have to get driveway permit. Planning Bd will look at that. That is engineering.
K. Johnson said if granted, when that lot is whole and when buyer decides to build on it. It could sit there another 25 years.
T. Quinn said to get subdivision approval they must show Planning Bd they meet requirements.
R. Constantino said they gave a map in the packet and 52-5 shows a building and drive between shows small building and not showing lot.
T. Quinn said that structure is not on there. Think it goes on another lot. There is a house there. He didn't draw the lines.
R. Constantino said the picture shows a building there.
T. Quinn said he walked it Tuesday and there is a house to the right.
Robin Lunn said the document Rob Constantino was looking at is something the office put in the application as a way to locate the property. It is GIS map. Lot lines are not accurate. Just a way to know where the tax map is located.
K. Johnson added, to get an idea of the lay of the land.
T. Quinn said in terms of essential character the intent is to make these lot line adjustments to the other three, gain three more compliant lots and the rest will go to conservation. Creation of one will have little or no effect on character. Will granting threaten public safety or welfare? Not seeking variance to create several nonconforming lots. It is single lot. Will add couple of cars a day to traffic but no significant impact on that. Meets sight requirements and can be done in a safe manner. Re substantial justice, he quoted from the Handbook that perhaps the only guiding rule is that loss to the individual not outweighed by gain to the public is an injustice. Despite the size of the remainder parcel, lot doesn't have significant useable frontage because ordinance requires, in order to create a lot with 200 ft frontage, it has to be continuous frontage. From the plan submitted, although it has significant frontage from north to south it is broken up. Although it is 200 ft frontage, it is not useable. In order to get second lot, variance is needed. Denial would result in loss because they have 30-40 acres and trying to get two lots and dedicate the rest. Strict application would deny that and would not result in appreciable gain to public. Two acres parcel, will not affect density of the neighborhood, will not affect visual density because it will be set back and not visible from the road. Doesn't see any negative impact on character of neighborhood or threat to the health, safety and welfare of the public. Denying would not lead to gain to general public. Granting would lead to creation of substantial portion of conservation land which is public gain, but is consistent with expressed intent of the district which is to protect environmental sensitive area. They are promoting purpose. Will not diminish value of surrounding property because size of the lot is essentially compliant and as large as or larger than many in the area. Meets all requirements except frontage. It is set back from road, difficult to see from the street. Difficult to see how any negative impact. Considering 30 acres going into conservation, will likely improve values because it will not be developed and will be adjacent to or across the street from hiking trails. Literal enforcement would result in unnecessary hardship. Special condition of the property – it is significantly larger than others in area. Despite its size it doesn't have long stretches of frontage. It is of size and condition that would otherwise be suitable for development. Owing to special conditions that distinguish it from others, denial of the variance would cause unnecessary hardship because no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the remainder parcel. The ordinance declared purpose is to provide low-density residential and agricultural uses and other compatible land uses sensitive to the rural character and environmental constraints in the district.

Proposal is consistent with that. Protecting a large piece of land and rural character of the neighborhood. Strict application of the frontage requirement to applicant's proposed second lot is not fairly and substantially related to the general purposes. Larger lot sizes in district intent is to prevent overly dense development. They are not engaging in overly dense development. Only adding one lot. Will be as large or larger than several lots in the neighborhood. Will make other lots in subdivision fully compliant. Visual density will not be impacted because the house is set back. Because of 30 acres going into conservation, proposal actually furthers the objective of the ordinance. The proposed use is a reasonable one because it is a permitted use in the district. Proposed reduced frontage lot meets or exceeds all requirements in the ordinance except for frontage. Because only one reduced frontage, will not undermine intent of the ordinance, alter or negatively impact the neighborhood, or endanger the public health, safety and welfare. Owing to the back lot configuration the house will be set back a great distance from Melendy Rd. 30 acres of conservation is benefit to the public.

[Text of application responses follows:]

1 & 2. Granting the Variance would not be contrary to the public interest and the spirit of the ordinance will be observed because:

Granting the variance would not unduly and to a marked degree violate the basic objectives of the zoning ordinance and will not alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public. The Applicants' plan is to create two lots out of a 40 acre +/- parcel of land. One of the lots is fully compliant with the minimum size and road frontage requirements. The second lot is fully compliant with the minimum size request but its proposed would have only 50 feet frontage. The purpose of the size and frontage requirements are to prevent excessively dense development. Granting the variance will create only two additional lots out of a parent tract of approximately 40 acres. The granting of the variance will not create an unsafe or congested situation or alter the essential character of the neighborhood.

3. Granting the variance would do substantial justice because:

Granting the variance will enable the owners to make reasonable use of their land and will have no adverse impact on the public.

4. Granting the variance would not diminish the value of surrounding properties because:

The neighborhood is established and consists largely of 1 and 2 acre lots, many having less than 200 feet of frontage. An additional house on a lot of 2 acres, but with 50 feet of frontage will not diminish the value of the properties in the neighborhood.

5. Unnecessary hardship:

A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

The purpose of the Residence R District is to require larger lots than required elsewhere in Town in order to control density of and maintain the rural character of the area. The Owners are proposing only the creation of two lots from 40 acres which is consistent with the objectives.

ii. The proposed use is a reasonable one because:

Again, the owners propose only to subdivide two residential lots from a 40 acre parcel.

B. Explain how, if the criteria in paragraph 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:

Given the size of the lot approximately 38 acres and the minimal frontage that exists, which special conditions distinguish the premises from other properties in the area, the property cannot be used reasonably in strict conformance with the Ordinance and a variance is therefore necessary to enable a reasonable use of the property.

K. Johnson asked for questions.
M. Thornton said looking at parcel A and 52-5, wonders how lot line had not been adjusted to allow at least 100 ft. 154 and 104 both are non – conforming.
T. Quinn said he tried to address it earlier because ownership of 52-5 is not identical to 52-4, and 52-5 doesn't want to give up that portion because of topography and that they might want to build with a walk-out basement. Owners of 52-4 cannot unilaterally do that. Third party has not expressed willingness to do that.
J. Plourde asked the distance on Lot 2 going from north to south past the orange line to the first point where it bends out.
T. Quinn said not as much as it looks because looking at 47-51 there is drive that curves around back. Was originally Melendy Rd. Road was relocated to its current location so the actual part of that frontage that abuts the road opposed to 47 61 is minimal.
J. Plourde asked how much frontage of Melendy for Lot 2.
T. Quinn said at least 210.
J. Plourde said they were talking about 50 ft. for lot line. There is reason why we have 200 ft. in ordinance. Also have the town drive design feature where you need to have 100 ft. separation between roadways, driveways in Res R. You are not going to get that on the 50 ft. lot. Might if you reconfigure lot 2 and shift lot 1 up there instead so you had 200 ft. there, and if you subdivide frontage you would have 100 ft and 100 ft. That would be more palatable to him. It was mentioned a roadway could be 50 ft; but you still have to have that separation, also between other driveways or other intersections. He said Atty. Quinn had mentioned in the write-up a roadway being only 50 ft. But other criteria is separation between drives of 100 ft.
T. Quinn said that in that neighborhood there are many drives that don't meet that.
J. Plourde understood, but it said in the most recent plan they are trying to fix a lot of that. Concern is a safety issue with curb cuts on top of curb cuts. That is why we have ordinances, etc. Not trying to shoot it down, but trying to figure out another way, maybe a better way.
T. Quinn understands what he's saying. That is why they had engineer go out and make sure there is a 200 ft. sight in each direction.
J. Plourde if that was with clearing of vegetation, too?
T. Quinn said regulations say to conduct the sight distance test, you can't stand at the edge of the road; have to stand 8 or 10 ft. back.
J. Plourde said it was 14 ½ ft.
T. Quinn said they did that. It will be necessary to knock down a little bit of a berm somewhat. But it is on the lot.
J. Plourde said it is on controllable land. Is there a way - maybe more of a visual issue. He sketched on one of the plans provided to almost split Lot 2 in half and extend it further along rear property line and able to have Lot 1 and 2 on top of map.
R. Moulton said it might be possible. Haven't considered it. Only problem is slope. Only one flat area. . Would have been great to put two lots up there. Engineer said there is only one point to build. Back further it is even more sloped. It would be difficult to put two lots there.
K. Johnson said similar to 52-5, issue is topography. Difficult to see on this map. Going out to the property, it is obvious at times.
J. Dargie said they took 100 ft on each side. Is shared driveway with one curb cut better? They could put a condition to make access to that lot more acceptable given other lot doesn't have a house on it.
K. Johnson said it was different owners.
J. Dargie said part of the plan was they were getting additional land.
T. Quinn said 52-5.
K. Johnson said in future, but not as of this.
J. Dargie said 25 ft for the access drive is minimal. Trying to make that more palatable.
K. Johnson said that one memo was received on this case. It was from Conservation Commission dated June 9, 2016 addressed to the ZBA, stating that they support the request for a variance.
K. Johnson opened the meeting for public comment.

Jon Prieskett of 182 Melendy Rd came forward.
K. Johnson asked if he knew his Map #.
T. Quinn said he thought it was 42-57-2.
J. Prieskett asked to review the map of what being proposed. He said looking at Milford GIS site, the 231 parcel doesn't have 200 ft. frontage. It is 195.
K. Johnson said they had already been informed that the GIS is not necessarily accurate re lot lines and frontages.
J. Plourde said to be aware of what they were discussing, Lot 52-4 on GIS at top where it comes in. Closest across the street would be 47-52 right before the split in the road. That is the lot and then coming down along Melendy.
K. Johnson said it appears that difference between the tax map and the GIS map, all of these properties, 52-5 shows on GIS a structure on it. It doesn't have a structure on it. And parcels 47 through 61 is the group on the GSI that doesn't have numbers on them on their report, those are all shown on GIS significantly north of what actually exists. From tax map it looks like 227 or 229 & 295 have the proposed frontage on Lot 2
T.Quinn said tax map showed about 299.52 ft.
J. Prieskett said there is no second owner at 195 Melendy Rd?
K. Johnson showed him GIS structure which is not on that road. Compared to the plan actual Tax Map shows 299.5 ft to the first lot line adjustment off Melendy Rd.
J. Prieskett asked intent of that lot.
K. Johnson said residential development lot of 2.9 acres of almost 300 ft. frontage.
J. Prieskett asked if that was part of this proposal being broken up.
K. Johnson said only proposal is lot, which he pointed out on plan, which is informational to show they want to create two lots and some lot adjustments showed he whole proposal to be presented to the Planning Bd. He pointed out lot to be created and lot requesting variance with 25 ft. And then area to be granted conservation easement. Only reason for lines is to show what it will look like with the conservation easement. Lot 2 is irrelevant. It is a Planning Bd issue. Showed it for reference to show what would happen if they break two lots off and remaining piece as they would go for conservation.
J. Prieskett understood that this lot is not for potential future division.
T. Quinn said that is fully compliant lot. Just concentrating on plan for development of the parcel. Trying to be up front and show everything they envision. That piece of it as long as final survey done shows adequate frontage and lot and useable land, that may be approved.
J. Prieskett asked if that was something being addressed at the Planning Bd now.
T. Quinn said not yet. Mr. Prieskett would be invited back.
J. Prieskett said her heard it said there would be no impact to the density of the neighborhood. Incorrect. Even one house is an impact. There is another driveway and there is a hill next to that proposed entrance where you can't see now. Adding an access that is more frequently used, it will be more difficult to see traffic. Probably would discuss further with the Planning Bd., but when he decided to purchase his land he understood it was all conservation area, not to be changed.
K. Johnson said it may have been an understanding but without actual maps to refer to, it appears to be a misunderstanding.
J. Prieskett said it was very sloped across from his property. Can't foresee anyone wanting to build there.
K. Johnson said that is Planning Bd. to determine, is this lot worth building on, does it meet development requirements.
J. Prieskett said what he was hearing was it was primarily Lot 1 at this meeting and nothing else under consideration? The subdivision of the lot.
K. Johnson said at this point, yes. They may or may not condition it, if approved, on completion of conservation easement on certain portion. They will discuss that. But at this point the whole meeting is about that one small piece of property labeled Lot 1, which is 2.3, more or less, acres with 25 ft. access off Melendy Rd.
J. Prieskett commented he thought it is great that bulk will be conservation area. His concern is Lot 2. Impact on his property. \

There being no further public comment, K. Johnson closed the public comment portion of the meeting.
T. Quinn said in discussion, he heard it referred to as 25 ft. Will be 50 ft. Wanted to make that clear before the deliberations.
K. Johnson said he did read it in.

1. Would granting the variance not be contrary to the public interest? and
2. Could the variance be granted without violating the spirit of the ordinance?

J. Dargie – only concern is the curb cuts. How will be set in back, not seen from the road. Would not be contrary to public interest.
L. Harten agreed. Doesn't believe it would be contrary to public interest primarily because it would result in unnecessary hardship to the applicant if denied. Approval would not be harm to public interest. Believes spirit of the ordinance would be observed. No excessive density. Re health, safety and general welfare, can't see it would affect that or cause problem in that area. Appears to be good sight distance in both directions on Melendy Rd from that 50 ft of frontage. No problem with it being contrary to public interest or that spirit of ordinance would be observed.
J. Plourde said based on #1, no. Because it is not going to alter the essential character of the neighborhood but could cause threat to health, safety and welfare because ordinance says 200 ft drive separation of 100 ft for safety and not having curb cut on top of curb cut. You may have cars turning in and out right on top of each other and that is why they the driveway spacing.
M. Thornton said yes, it is not contrary to public interest. Notwithstanding Jason's argument. Does see good sight lines from the drive. Doesn't see density problem. Does see something in the public interest, which is the conservation land.
K. Johnson agrees with majority. Doesn't see it contrary to public interest. Other adequate protections in the ordinance as well as this is not a main thoroughfare that sees substantial levels of traffic, that even curb cut of less than recommended would create significant enough safety hazard to be contrary to the public interest. Within spirit of the ordinance it is situation with this parcel of land which could, if owners decided, be developed into further lots so granting this variance would be within the spirit of the ordinance because it would be maintaining lower density of the area by not forcing owners into a potentially heavier development.

3. Would granting the variance do substantial justice:

M. Thornton- yes
J. Plourde – looking at loss to the individual not outweighed by gain to the public if they deny. Doesn't see gain to the public. Even though it is a safety issue. Saying no as to 1 and 2, but for this #3, saying yes.
L. Harten – Granting would do substantial justice because he believes the loss to the individual if they deny would be more substantial than gain to the public interest.
J. Dargie – agrees with Len.
K. Johnson agrees. By denying, sees no gain to the public. Therefore, applicants made determination this is something they wanted to proceed with so obviously there is some gain to them. With no potential for anything for the general public, denying would result in loss to the applicants.

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

J. Dargie – can be granted without diminishing value of abutting properties. Will increase value.
L. Harten believes if they grant it, there would not be diminishment of values of surrounding properties. As stated by the applicant there are other properties in the area – not sure how close – but other lots that probably go back far enough so that they did not have 2 acre minimum or 200 ft. frontage, so if they grant this with 50 ft he doesn't believe any diminishment of value to any abutting properties.
M. Thornton - when you don't see any objection from abutters yes.

J. Plourde – agrees. Will not diminish with lot line.
K. Johnson agrees. Adding additional lot, considering density of existing property along this road,this one additional home would not have significant impact. As Joan commented, it could have potential to increase it by having conservation easement close to these adjacent properties.

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.

M. Thornton – denial would result in unnecessary hardship to all the applicants, not just the ones sitting at the table. Town would gain by conservation land.
J. Plourde – proposed use is a reasonable one.
J. Dargie agrees with others.
L. Harten agrees. Believes if they deny variance it would result in unnecessary hardship. Doesn't see any fair and substantial relationship existing between the general public purpose of the ordinance and the application of it. Believes it is reasonable use of the property.
K. Johnson agrees with others. The underlying RSA requires something unique about the property. This is a large property which does have legal potential to be subdivided into a number of small lots. Most of existing lots are smaller than the required Res R lot with frontages less than required 200 ft. Thinks it would be unfair and unnecessary hardship to deny.

K. Johnson asked about adding conditions.
He would like to see a condition added to the grant of the variance that some form of conservation easement be granted – that approximately 30 acres of 52-4 be placed under some form of conservation easement following the approximate lines on the conceptual subdivision dated May 31, 2016 submitted with the application. Discussion?
There was none.
K. Johnson moved that a condition that if this variance is granted, the condition be added to grant that approximately 30 acres of Lot 52-4 be placed under some sort of conservation easement approximately following the lot lines shown on the conceptual subdivision document dated May 31, 2016.
L. Harten moved.
J. Dargie seconded

Vote on Condition:
Yes vote is to require condition.
L. Harten – yes J. Dargie – yes J. Plourde – yes M. Thornton – yes K. Johnson – yes

Vote on Criteria:

1. Would granting the variance not be contrary to the public interest?
L. Harten – yes; J. Dargie yes; M. Thornton – yes; J. Plourde – no; K. Johnson - yes

2. Could the variance be granted without violating the spirit of the ordinance?
J. Dargie– yes; J. Plourde – no; M. Thornton – yes; L. Harten – yes; K. Johnson - yes

3. Would granting the variance do substantial justice?
M. Thornton – yes; J. Plourde – yes; J. Dargie – yes; L. Harten – yes; K. Johnson – yes

4. Could the variance be granted without diminishing the value of abutting property?
L. Harten – yes; M. Thornton – yes; J. Dargie – yes; J. Plourde – yes; K. Johnson - 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. Dargie – yes; L. Harten – yes; J. Plourde – yes; M. Thornton – yes; K. Johnson – yes
K. Johnson requested a motion to approve variance requested in Case #2016-14, with the attached previously approved condition.
L. Harten made motion to approve the applicant's request for a variance from Sec. V5.04.4.A of the zoning ordinance to allow the subdivision of a 2.3 acre lot from Parcel 52-4 allowing for 50 ft. of frontage where 200 is required in the Residence R zoning district. The property is located at Tax Map 52, Lot 4, with the condition previously approved.
M. Thornton seconded the motion.

Final Vote:
A yes vote is to grant the variance requested in Case #2106-14 with a condition that a conservation easement be granted.
J. Dargie – yes
L. Harten – yes
M. Thornton - yes
J. Plourde – no
K. Johnson – yes
Case #2016-14 was approved by 4 to 1 vote.
K. Johnson reminded applicants of 30-day appeal period.