

**Town of Milford
Zoning Board of Adjustment
September 6, 2018
Case #2018-26
Suzanne DeMontigny, Trustee
Variance**

Present: Jason Plourde, Vice Chair
Michael Thornton
Rob Costantino
Wade Scott Campbell, Alternate
Karin Lagro, Alternate

Absent: Joan Dargie
Tracy Steel, Alternate
Robin Lunn, Zoning Administrator
Laura Dudziak, Board of Selectmen Representative

Secretary: Peg Ouellette

Suzanne DeMontigny, Trustee, for property located 64 Tonella Rd, Milford, NH, Tax Map 43, Lot 24, in the Residential B District is seeking a Variance of the Milford Zoning Ordinances per Article V, Section 5.03.3 .GG to allow for an additional single-family dwelling to be relocated to an existing lot which currently has two (2) residential homes.

APPROVED May 2, 2019

Motion to Approve: _____

Seconded: _____

Signed: _____

Date: _____

55 J. Plourde, Acting Chair, opened the meeting and introduced the Board members. He informed all of the
56 procedures of the Board. There was a full agenda and they may not be able to hear all cases. He explained
57 that the rules allow for a 10 p.m. adjournment. Any cases not heard or tabled would be re-scheduled to a
58 date and time certain. There would be no further notice to applicant or abutters for cases continued or tabled
59 to a date, place and time certain. He said there were three full Board members present and two alternates.
60 He asked to seat Karin Lagro and Wade Scott Campbell, Alternates, as fully participating and voting
61 members. All in favor.
62 Justin DeMontigny came forward, as representative for this case, along with Doug Maguire, Engineer with
63 the Debay Group.
64 J. Plourde said this was a variance and the evening's previous cases were special exceptions, so this was a
65 little more cumbersome. He wanted to make sure the record was complete. Asked J. DeMontigny and D.
66 Maguire to give any information they wanted to present, not only what they were doing, but visions for the
67 future of the property. Give the Board an idea of what was going on and go through the criteria.
68 D. Maguire offered handouts to the Board, but they already had them.
69 J. Plourde said the handout was part of the packet; it was not new information received on this case.
70 D. Maguire said this was a unique property. It was an old granite quarry, which were fairly common in
71 Milford. It had been converted to a single family residence. DeMontigny family living there many years.
72 Currently two single family homes on the site. One qualified as a guest house. The structures in the
73 southeastern portion were just stone structures – kind of a garage, open in the front. Really for storage and
74 some of the historic granite was used on the side. This was in Res. B zone in the high density Residential
75 district. The 12.7 acres they had by ordinance would permit up to 60 units on the property just because it
76 was intended to be high density multifamily zone in town. Property had sentimental value; the family had
77 grown up there. Not looking to develop it. Want to keep it as the family estate. Because the children were
78 getting older they were looking to keep this process going. They enjoyed growing up there and as they have
79 additional children, they would need additional home. Looking for additional single family home to be on
80 the 12.7 acres. He would give overview of the criteria – asked Bd. to feel free to interrupt with questions.
81 Re first criteria, this was in Res. B, high density area in town, which would support up to 60 potential units.
82 R. Costantino said a lot of the property was the quarry. You can't build on water. Would probably be half of
83 that 60, but still a lot.
84 D. Maguire said it was interesting, but the ordinance didn't say that. As far as calculating, if you could build
85 multifamily or garden style condos you could get to that 60. But with townhouses, R. Costantino was right.
86 They recently did a similar development and it was qualified as number per acre, not a buildable acre
87 requirement. You had to meet stipulations, etc. They didn't actually exclude wetlands. It was a significant
88 amount of density.
89 J. Plourde said there would be more than one extra house.
90 D. Maguire said there would be potential impacts from large scale development, with traffic, disturbance,
91 drainage, etc., would far exceed what would result from this one unit. By right, it could be a much higher
92 density. Spirit of the ordinance was observed. He took excerpt from the ordinance that intent was to provide
93 for increased residential density. One additional would not be contrary to that. It was in kind with what was
94 allowed. Some of the others around were single family. No provision to be an estate lot. Re substantial
95 justice, property owner not interested in large scale development. Allowing reasonable use by adding an
96 additional unit they didn't see adverse consequence to the public. Re value of neighboring properties would
97 not be diminished, Ledgewood community is up above the existing property – fairly high above, probably 60
98 ft. There was some potential multifamily development and some commercial and industrial uses along
99 Powers St. Nothing that would be adversely affected by an additional single unit. Multi family would not be
100 adverse development in this case. But an additional single unit would not have any impact to surrounding
101 road and abutters.
102 J. Plourde said he was a traffic engineer. Any kind of multifamily or complex of apartment development
103 would certainly impact Tonella Rd. He agreed that one extra home would not.
104 D. Maguire agreed. If they put 40 to 60 residences there were already issues with Tonella Rd. Potentially
105 could have an issue. They are thinking single unit would not have any noticeable impact.
106 J. Plourde agreed.
107 R. Costantino said it was not even visible to people off the property. Will never know it was there.
108

109 D. Maguire said correct. Finally, re hardship, the property was unique in that it was discontinued quarry
110 operation. Already two existing residence homes. The purpose of Sec. 5.03.3 of the ordinance was to
111 prohibit property uses which would not be in kind with surrounding properties. Re no substantial
112 relationship between the general purposes of the ordinance provisions and the specific application of that
113 provision to the property, because it was a residence use and far under the density. They felt there was no
114 relationship. Proposed use was reasonable. Expanding by one residential unit family estate, which was a
115 permitted use by right, just not as a family estate. Based on where they proposed to place the home – will
116 have to get a building permit if Bd. granted this – all applicable regulations, setbacks, water and sewer, etc.
117 would be met. Would not be looking for relief from any other Board for the building to be put in.
118 J. Plourde said if they voted that night on this additional single family home – he knew this property had
119 been before the ZBA on different occasions. Any plans beyond this third single family home?
120 D. Maguire said this was a slightly larger piece. They made a lot line adjustment. There was an existing
121 property across the front. The quarry property had no frontage. In order to gain some level of value of the
122 quarry they and move on to this estate property idea, they permitted over the last 15 months, 16 units and
123 extended Tonella Rd. and created a hammerhead. Improved Tonella Rd Created it as a town road and
124 provided frontage to the quarry property.
125 J. Plourde said they were able to get the 150 ft. frontage.
126 D. Maguire said they felt they cleaned up the situation. There was a steep slope behind the quarry. Could
127 not put homes in that area. Investment for putting three homes in flat area would be significant. Nothing
128 intended other than this unit.
129 J. DeMontigny said the intent was to protect it. No intent to develop the land.
130 J. Plourde said in 1995 when the property was before the ZBA, the attorney, who he knew, when he
131 responded to a comment from Len Harten on the ZBA, Attorney Leonard said the agreement was that there
132 was no further development. No cluster development, multifamily or any other proposal. That was why he
133 was asking about plans for the future. Coming in with a single family house contradicted what was said in
134 1995. He appreciated that they wanted to keep the property for the family. Didn't want to see it subdivided
135 or multifamily homes. Town of Milford didn't have an estate as a type of land use in the ordinance. There
136 was another similar location in town. Whether a precedent was established or not – it was for the Board to
137 contemplate if this was appropriate location for a single family and do they want to put conditions that it
138 won't be rented out, etc. Not just from legalities of the ordinance and from a traffic perspective, didn't want
139 more problems or congestion on Tonella Rd and Nashua St.
140 J. DeMontigny said they had a traffic analysis when they were contemplating 16 units. Even if it were rented
141 out by a close family friend for something like that. This house was being relocated 300 ft. away. Long term
142 tenants there for past ten years. Would rather not displace them if he didn't have to. He wasn't going to
143 move in right away and didn't want to kick them out. Not necessarily a traffic impact.
144 J. Plourde said for one house.
145 J. DeMontigny said for the 16 units, it didn't even elicit it.
146 D. Maguire said the goal was to have that extra home because they saw potential for the family estate in the
147 future and really setting it up to protect this property. They could have gotten more townhouses in there.
148 They held it to this number because they wanted a certain buffer from the property. He would say they
149 would probably not be looking to have any restriction on this. Guaranteed they can't be sold because all
150 under one ownership. If they look for long term tenant and it was getting to the point where he was looking
151 to come back they were set up because they wouldn't want to displace them. J. Demontigny had a sister and
152 their father – three family situation now. More about setting themselves up in a lot of ways. If they tried to
153 put 60 units there would be backlash. That would trigger something at the Tonella intersection. They were
154 not looking to do that. It solidifies the flat area of the property for a developable footprint. You have three
155 homes and two storage units. This was how they want to keep it. It will be a substantial financial
156 commitment to move the house – foundation, utilities, etc. As they grow and get older they want to have
157 opportunity to have these three homes available to them.
158 R. Costantino asked where the house was being moved from.
159 D. Maguire said there was an existing lot with 40 ft of frontage on Tonella.
160 R. Costantino asked if it was right outside the driveway and gate area, the 6 townhouses.
161 D. Maguire said that was correct.

162 R. Costantino asked if that was the stone house. In the previous application there was something about a
163 stone structure.
164 D. Maguire said no.
165 J. Plourde said in previous application, they had come in to the ZBA it was about the stone structure.
166 D. Maguire said they had come in about preserving the stone structure. It was a setback issue.R. Costantino
167 said a right of way on the other side of the road.
168 D. Maguire said they found that having to bend a right of way created an unnatural kink in the road. With
169 the 12 units it would be an issue with the cut. They said they would not keep it. They were going to utilize
170 the stone on their property. The Historical Society and Lincoln Daley talked about hoping to preserve it.
171 After they received conditional approval and J. DeMontigny asked for any way to preserve the stone
172 structure and maybe get the four units and incorporate it as part of the garden. They did and came up with
173 something, showed it to Lincoln. But Lincoln was doing his own homework and got some people in town
174 willing to carefully remove it from the site and place it at a local park in town as a feature to be enjoyed by
175 the public. It took time to coordinate that and make that happen and the generosity of others. They were
176 now doing that. They were keeping the design plan, turning the building a bit. He knew the ZBA would
177 have questions about that.
178 M. Thornton asked where it was going.
179 J. DeMontigny said the old Fletcher site. Lincoln had been very good about coming up with different ideas.
180 R. Costantino asked if the six unit townhouses were not built now? There was a house there they were going
181 to move?
182 D. Maguire said correct.
183 K. Lagro asked if the house being moved had tenants in it.
184 D. Maguire said yes. The physical moving of the house could be done very quickly so they would not be
185 displaced for any amount of time – about a week. They would set the new foundation there all ready to go.
186 Everything prepped, utilities all there.
187 J. DeMontigny said they would need to get the building permit, so about 4 days.
188 J. Plourde asked for any other questions from the Board about the project or the variance.
189 M. Thornton asked if the house was being continually kept in the existing condition, or renovated to more
190 modern.
191 D. Maguire said there was discussion about adding a garage bay.
192 J. DeMontigny said they were not going to be doing foundation for that at that point but will be adding a
193 garage bay at some point. That would be the extent of any addition or renovation of that home. They don't
194 plan to change or knock down the existing home. It was cheaper to move it than to build it.
195 K. Lagro asked if it would continue to be rented after moving.
196 J. DeMontigny said initially temporarily. Eventually then intend to be moving into this home. Intent is to be
197 a family estate.
198 D. Maguire said this was a long term tenant. If they move out, he didn't think they would be moving in a
199 new tenant. The family had known these people for years. The DeMontignys have been very protective of
200 the property from safety standpoint. Many years ago kids wanted to hang out and jump into the water.
201 J. DeMontigny said they used to have to be in there all the time telling people to leave; there were kids
202 jumping off the cliff, drinking and broken beer bottles all over.
203 D. Maguire said they didn't want someone to impact their enjoyment of the property.
204 J. DeMontigny said they like privacy. And peace and quiet. That is how the current tenants are.
205 J. Plourde said they are almost like family?
206 J. DeMontigny agreed.
207 J. Plourde asked for any more questions. None. He opened public comment. None.
208 J. Plourde closed public comment and asked the applicant if he had anything to add.
209 J. DeMontigny said just repeating they were protecting the property and not looking to develop. In previous
210 time – wasn't about developing it any further – that was his parents. It was now him and his sister. They
211 were terrified of having people around and seeing everything. Goal was to keep privacy and the woods and
212 have their own sanctuary in the middle of town.
213 M. Thornton asked about doing landscaping to protect privacy.

214 J. DeMontigny said they were always trying to make sure they had treeline buffers around. There were
 215 higher levels around them. It was important they were not getting too close to their lines because in winter
 216 people were looking right down on them.
 217 J. Plourde closed public comment and moved into discussion of the variance criteria.
 218 J. Plourde said he had done research about the property in the past. Felt a single family home would not have
 219 adverse impact. Other property uses could.
 220
 221 M. Thornton said putting a single family there would, to some extent, preclude future uses.
 222 W. Campbell said he grew up near there. People used to jump off the ledge. Before they were developed
 223 you could go up Powers St. and drive behind and access it. With that being said, would rather see one single
 224 house put there or moved as opposed to 30 units, and he thought the town would be happy with that.
 225 J. Plourde thought they were all in agreement that single family would be preferred. Looking at single
 226 family home itself and looking at the variance criteria and not what else it could be, and going through the
 227 criteria make sure they were comfortable with that and not getting too bogged down in what it could be.
 228 After discussion, they will vote. As far as single family home, the applicant presented different information
 229 as to how they felt they satisfied the criteria. One thing that usually bogged down any Zoning Bd., not just
 230 theirs, was the hardship question. It came down to the uniqueness of the property. Looking at topography of
 231 the land to the southwest it was very hilly, with the quarry in the middle. Limited opportunities for
 232 development on the property itself. He agreed when it was presented as far as the total area – didn't matter
 233 whether it was a quarry on it – you take the acreage into consideration whether it is buildable or not, for your
 234 calculations. Looking at the single family home and the criteria it was a lot of property. Hardship was that it
 235 was not really a buildable property. They were supposed to take extra measures to get the frontage on
 236 Tonella Rd. with the hammerhead and lot line adjustments. They were doing everything they could to
 237 accommodate the criteria. Anybody else have anything to add?
 238 R. Costantino said he said it right as far as hardship the condition that there was no substantial relationship
 239 between the public good and what they were trying to do. Doing that will not adversely affect the public.
 240 J. Plourde agreed. With a single family home. He was absolutely right. Honestly didn't think it would be
 241 even noticeable over the course of the day, or during critical times, with one or two cars. Didn't see a
 242 negative impact on surrounding neighbors or anybody commuting on Nashua St.
 243 K. Lagro said all you had to do was add one single family home at a time – no traffic impact.
 244 J. Plourde said in Massachusetts, if it was on a state roadway, you had to go through the Massachusetts
 245 Environmental Policy Act (MEPA) process and you can't segment a property and just build a little at a time
 246 to avoid different thresholds and impacts. You had to show the overall development, even if you weren't
 247 proposing anything at that time. In this situation where you had different features on the property, it was
 248 very difficult to add. He could see maybe one or two more homes on it.
 249 W. Campbell said even then impact was relatively low.
 250 J. Plourde said they would have to come back for that. Unless the Town came up with a definition of an
 251 estate.
 252 K. Lagro said she would have a little more of an issue but it was an existing home. They were picking it up
 253 and moving it. Not actually increasing impact, just putting it inside the property line.
 254 J. Plourde said that was right. If they were vacating the existing house and putting in a new one, then they
 255 would be adding a new house.
 256 R. Costantino said it was already six units.
 257 J. Plourde said that was a different project.
 258 K. Lagro there was a little bit of disconnect with the paperwork saying the purpose was for the family but it
 259 was actually rental property. But she guessed she could buy that down the road.
 260 J. Plourde said long term vision and intent was for the family to only live on that property. That was why he
 261 brought up a potential condition of not having it rented or leased. Only reason he asked was because the
 262 application said it was intended for family use. But, did it matter as long as it was controlled by the family.
 263 It was not going to be a multi family home.
 264 W. Campbell said they were not changing a lot. If it was them living there or a renter, somebody else living
 265 there, impact would not be much.
 266 J. Plourde agreed. But it was more a definition of a family estate. They don't really have that.
 267 W. Campbell said they can't really lay ground on that.

268 J. Plourde agreed. Anything else? Asked K. Lagro if she was okay.
269 K. Lagro said yes.
270 J. Plourde said the intent of questions was if you were in favor, you would say yes. If opposed, say no.
271
272 **Granting the variance would not be contrary to the public interest:**
273 K. Lagro said yes.
274 W. Campbell said yes.
275 R. Costantino said yes.
276 M. Thornton asked about voting no meant saying yes it would be against?
277 J. Plourde rephrased it –this was not going to be contrary to the public interest, was it?
278 M. Thornton said no.
279 J. Plourde said the other way of saying this was, this is not going to have any impact?
280 M. Thornton said yes, it was not going to have any impact.
281 J. Plourde said yes (to the criteria)
282 **If the variance were granted, the spirit of the ordinance would be observed:**
283 M. Thornton said yes.
284 R. Costantino said yes
285 W. Campbell said yes
286 K. Lagro said yes
287 J. Plourde said yes
288 **Granting the variance would do substantial justice:**
289 K. Lagro said yes
290 W. Campbell said yes
291 R. Costantino said yes
292 M. Thornton said yes
293 J. Plourde said yes
294 **Granting the variance would not diminish the value of the abutting properties:**
295 M. Thornton said yes.
296 R. Costantino said yes.
297 W. Campbell said yes.
298 K. Lagro said yes.
299 J. Plourde said yes.
300 **Unnecessary hardship:**
301 K. Lagro said yes.
302 W. Campbell said yes.
303 R. Costantino said yes.
304 M. Thornton said yes.
305 J. Plourde said yes.
306
307
308
309 J. Plourde said based on the vote the criteria had been satisfied. The variance was granted.
310 J. Plourde informed applicant of the 30-day appeal period. There being no other business before the Board.
311 M. Thornton moved to adjourn.
312 R. Costantino seconded.
313 All in favor.
314 Meeting adjourned at 8:50 p.m.