

**Zoning Board of Adjustment
December 6, 2018
Case #2018-32
Granite Holdings, LLC
Variance**

Present: Jason Plourde, Vice Chair
Joan Dargie
Michael Thornton
Rob Costantino
Wade Scott Campbell, Alternate
Robin Lunn, Zoning Administrator
Laura Dudziak, Board of Selectmen Representative

Absent: Steve Bonczar, Chairman
Karin Lagro, Alternate
Tracy Steel, Alternate

Secretary: Peg Ouellette

Granite Holdings, LLC, for the property located at 5 Granite Street, Milford Tax Map 21, Lot 6-1, in the Commercial District is seeking a Variance of the Milford Zoning Ordinances per Article V, Section 5.05.1.P to allow for two (2) additional residential units in an existing two-family dwelling.

APPROVED May 2, 2019

Motion to Approve: _____

Seconded: _____

Signed: _____

Date: _____

Jason Plourde, Acting Chair, opened the meeting and introduced the Board members. One regular member was absent, so J. Plourde asked that W. Scott Campbell be seated as a voting member. All agreed. J. Plourde informed all of the procedures of the Board. He read the notice of hearing into the record. Tucker McCarthy of Granite Holdings, LLC came forward to present the case. He provided two graphics to the Board that he hadn't included in the application packet: An aerial view; and pictures of the ground view. (Aerial image designated by Chair as Exhibit 1 and ground level designated as Exhibit 2). He stated he was one of the owners of Granite Holdings. Subject property was at 5 Granite St., which he purchased a little over five weeks ago. It was the next property up from Mont Vernon St., adjacent to the former Montessori school which was currently undergoing a change to a bed and breakfast or function hall. Property was in the Commercial zone and an oddly shaped lot of ¼ acre. It was currently a 2-family, which was allowed by right in Commercial zone. Assessed by town at a little over 3500 SF but actually only about 2500 SF was habitable. Property was undergoing renovation and currently contained the main building of three stories with walk-out basement. Third floor was uninhabitable; has been used for storage. Also has a two-story barn, partly for utilities and another open space. He referred to the aerial view of property, saying they were looking to use the existing space. He had thought there was space for four additional units, a total of six. But that would likely require a driveway that would be seen from the abutting property. Didn't think that was appropriate. He felt he did have enough parking for eight cars; thought it was appropriate to ask for a total of four units.

R. Costantino asked where the eight cars were.

T. McCarthy said it was an L-shaped building and pointed out Granite St. and Billings St. Enough room for eight cars within the existing space.

R. Costantino could see three cars and space for another. Where would the other four cars go?

T. McCarthy pointed out space.

R. Costantino asked if there was a plan for who could park in front of whom?

T. McCarthy said he would have to figure that out. When property was purchased there was a tenant there for over 22 years. They had to redo entire units top to bottom. Difficult to do with tenants there. One was parking on Granite St. Possibly space for two cars and two cars – may not have to stack them. Would have to work that out with tenants.

R. Costantino asked if there was space on the other side of the house, facing Granite St.

T. McCarthy said there could potentially be parking there but was trying to limit impact to abutter down the street. Hoping to contain everything up the hill and not add any impervious.

R. Costantino didn't think you could fit eight cars. He drove by there and there were two pickups and a dumpster; that was all that could fit.

W. Campbell said he only saw room for six.

M. Thornton had difficulty coming up with a way to accommodate enough without stacking; even with stacking, it would be a challenge.

T. McCarthy said he could potentially put two below and put up a fence to block view from the abutters.

Thought there was space for seven to eight cars. He didn't know when R. Costantino went by; he had trees removed.

R. Costantino said he drove by that day and the day before.

J. Plourde asked R. Lunn if they needed a site plan approval for that.

R. Lunn said yes.

T. McCarthy said he could tape out a plan with the spaces.

R. Costantino felt that would be a good thing to do.

T. McCarthy knew one of the requirements was available parking. Tenant living on the first floor parked right on the street because the door is on the front, and during parking ban he moved into the driveway. Usually not a big deal.

J. Plourde designated the ground view as Exhibit 2 and the aerial view as Exhibit 1.

J. Dargie asked about property markers. Street was right there to the drive. Usually there was a right of way off the street. Did he know where the markers were for that? It was possible he could check it out and possibly find he didn't have that drive. Town just found similar to that at Keyes.

T. McCarthy said if that were the case his building would be in the right of way.

J. Dargie said they needed to know.

R. Costantino asked if he intended to use the garage for parking.

T. McCarthy said he could potentially. Was not changing parking.

J. Dargie could see he could park four cars; one on the left might not be his property; wouldn't know until he got his markers.

T. McCarthy had GIS.

J. Dargie said GIS not accurate and referred to a property in town they thought went one way and it turned out it went the other way. Difficult with this being such an old property. Wouldn't want to make a decision without knowing. Could not give authority without knowing.

T. McCarthy pointed out on Exhibit 1 where two cars could be and other two cars.

J. Dargie's recommendation would be to measure that out.

T. McCarthy referred to two parking spaces and another. Asked what requirement for parking was.

R. Lunn said it was two spaces per unit. Must be 9 x 18 . Can't stack. And it must be on his property. This had to go to the Planning Bd. for site plan and a use variance Site plan requirements will look at parking and open space calculations and all things a site plan will require.

T. McCarthy said he should have looked into it. Seemed to him there would be enough space. Would be a challenge to figure out lot lines. Would have to have a surveyor do quite a bit of work. Not sure it was possible. Billings St. area was unique in that it was narrow and dangerous. Two cars can't pass each other.

J. Dargie said that was why they were concerned - increased density. At some point nobody could get anywhere. Everything there at strange angles. Can't add sidewalks.

T. McCarthy said if the Bd. was agreeable to four units and he had enough parking for an additional unit that would be a contingency. He was being taxed on living space that was not liveable.

J. Dargie said he could fix that by going to Assessing.

T. McCarthy said he was in the zone for 79e tax relief program. Working with Planning Office. Lincoln [Daley] suggested he should come here and then go to the Selectmen. One of 79e requirements asked if it was increasing residential housing in the town center and promoting preservation or reuse of existing building stock by rehabbing of historic structures. There was high demand for rental units in Milford and he felt it was use of additional space to put in more units without adding impervious or new buildings. He was happy to answer questions. He said looking at page 3 you could see where the barn and trees; his vehicle wasn't pulled in all the way. Felt there was a decent amount of parking.

J. Plourde asked him to go through the criteria for a variance. He said a variance was more difficult to get vs. a special exception.

T. McCarthy read through the responses to items 1 through 5A.ii on the application.

J. Plourde asked for questions from the Bd.

W. Campbell asked, looking at bottom left picture on easel, if that was coming from Granite St. from the left side.

R. Costantino asked if he meant the back of the house.

W. Campbell said yes. Looking at it on Google maps, it seemed there was a possibility – didn't know where property lines were - could probably put car parking down there.

J. Plourde said he was trying to keep that area undisturbed.

W. Campbell said it was open.

T. McCarthy said J. Dargie had made the point that GIS wasn't to be trusted. He was a civil engineer by trade with a surveyor in his office. Difficult to establish this lot. Asked if it was a 10 ft. buffer.

R. Lunn said it was 30 ft. for front and 10 ft. for the side. Buffer depends on the development.

T. McCarthy said he would have to establish lot line because if he was going to put parking he would likely propose a fence.

W. Campbell said he made the point to explore all the options.

T. McCarthy agreed. Felt this property had ten acres and got chopped up and cut into over time; it didn't even get minimum lot size. Looking at page 2, GIS showed line going through the corner of his building. It did show about 40 ft. between his building and house down Granite St. So if he put in 20 ft. wide gravel drive, should have more than adequate space. Depended on the zone, but he believed 10 ft. required.

J. Plourde said applicant mentioned only thing holding him back was shape of the lot. Applicant said it himself. If this were a vacant lot he would not meet any of the criteria – setbacks, lot size, etc. A lot of things for Bd. to consider. They weren't asking him to tear down the building. Wanted to make sure they

were all on the same page that it was not just the shape of the lot. A lot of requirements that this development would not meet.

R. Costantino was trying to understand unnecessary hardship. Didn't look like applicant was addressing that. More saying relationship to the other neighbors. Having hard time seeing a hardship. It was a two apartment building. Didn't see hardship not to make it two more. Not sure he understood explanation for that.

T. McCarthy said hardship would be it was a small lot area. Not asking to expand existing square footage. Just to utilize square footage within the building. It was commercially zoned. There were a lot of other uses allowed in that district.

J. Dargie said that actually went against his hardship [that he could use property for something else].

J. Plourde read from the Handbook under criteria 5, "When the hardship so imposed is shared equally by all property owners, no grounds for a variance exist. Only when some characteristic of the particular land in question makes it different from others can unnecessary hardship be claimed." If the lot size was similar to others in the area, that didn't make it unique.

T. McCarthy it was significantly smaller than other lots in surrounding area.

R. Costantino said it was adequate for two units.

T. McCarthy said no density requirements for two-family.

R. Costantino didn't see hardship going from two to four. If it were half an acre it would probably have room for parking lot.

J. Plourde asked for anything else from applicant and the Bd. before opening up public comment.

T. McCarthy said part of his coming to the Bd. related to an April case #28-14. He understood each case was reviewed separately. That was a three family building where only single family was allowed. He said that the Bd. granted approval. That was why he felt it was appropriate; he had parking and this was in a commercial zone.

J. Dargie asked if that was on South St.

T. McCarthy said on Monson Place.

J. Dargie said that was denied. R. Lunn agreed it was denied.

J. Dargie thought it was denied, but said not that that mattered.

W. Campbell was looking at drawing and two car garage. He was not taking that into account.

J. Plourde asked if he meant the barn.

W. Campbell said yes.

T. McCarthy said he hadn't figured out where the additional units would be. Whether on the first floor of the barn or the first floor. Had to do an appraisal. Had considered one garage door on the first floor if he could make it work without stacking.

W. Campbell would be more apt to look at those two additional spaces. Even with two-car garage, would possibly have to stack.

T. McCarthy understood parking would be an issue. Would be willing to consider only three total units rather than four.

J. Plourde said, just so the applicant knew, his concern went beyond parking. As far as criteria re Sec. 5.01P associated with multi-family dwelling and accessory structures, they would need to satisfy requirements for Residence B multi-family. Density is maximum of 5 units per acre. Trying to make it more dense. Not necessarily good or bad, but they need to weigh all the characteristics that went with it. He was referring to setbacks, parking, height requirements, etc. A lot of different things that come into play in Residence B for multi-family homes.

J. Plourde opened meeting for public comment.

Hayes Junkins, with his wife Sarah Rockwell, of 35 Mont Vernon St. came forward. Abutters were glad that the property was being rehabbed. New windows looked great. Their major concern was with drainage on the water runoff. He was in process of talking with Cynthia Dokmo who lived next to them (29 Mont Vernon St). They have existing runoff from the Granite St. side. If additional parking that was hardtopped, or landscaping change, their concern was additional runoff onto their property. One could say he should not have purchased the house at 35 Mont Vernon below grade. He could tell them [pointing to Exhibit aerial photo & pointing to his home] that there was a property marker in the area. There was only one on that side he could find. On the Granite St. side you could really see their lot line. There were pegs there. What may look like property line and edge of the street wasn't the property line – it was much closer to his house. He pointed out new fence he put in and property line up Granite St. and there was one peg they could find.

Concern was whether there would be drainage issue. Questions from listening – were they talking about putting additional parking on that side of the street facing his property?

J. Plourde said that was brought up as a potential.

H. Junkins was concerned about drainage. There was substantial draining coming down to this property. Sarah Rockwell, his wife, said she didn't have any other concerns.

R. Costantino asked if that was the back of the property

H. Junkins said it was facing Mont Vernon. The Burnetts owned their property and then they cleared it.

R. Costantino said he noticed they cleared it. He asked how close to that they owned.

H. Junkins said there was no good picture there. Wanted to point out there was a marker that they thought coordinated with the stone wall.

R. Costantino asked, between the two buildings?

T. McCarthy thought a little closer to their house.

S. Rockwell said she wasn't understanding the question.

H. Junkins, pointing to aerial view, where she saw marker.

S. Rockwell said when they cleared the property it kept going back and back. Hard to see. Wanted to see where the property line was.

R. Costantino asked if they had runoff problems currently when it rains.

H. Junkins said yes. Said to come and see when it rains. He has talked with Town Administrator and Highway Dept. There was a town sewer that was clogged. Runoff from Granite St. and from something that came in – maybe a street at one point – but town has a drain on their property now. Hoping if the town owns it and is responsible for it, it could be cleaned out and they would get relief. Pointed out area that floods.

J. Plourde asked if Rick Riendeau looked at it.

R. Lunn said R. Riendau had been asked to take a look at it.

J. Plourde asked H. Junkins if the drain line was unclogged it would make any difference because it was all destined for that point.

H. Junkins said it was but would like to talk to town about neighbor because once upon a time was a place where water would run and meet the drain and not over their property. Substantial runoff – he pointed out where. Said to applicant he wasn't sure that was applicant's responsibility.

J. Plourde he was right that what was there wasn't applicant's responsibility but if he put in impervious or took away soil or grass or natural growth that could catch some of that drainage, it would be adding to the problem. Not necessarily amount of runoff, but flow rate would be increased.

R. Lunn said site approval requirement for storm water management for that site will be handled on the site. Part of the Planning Bd, process was storm water management on that property.

J. Plourde said that was not in ZBA jurisdiction.

T. McCarthy said, being a civil engineer, he would be able to help with any problems. Could put in a swale or something. He knew he would need to mitigate any increase in flow.

J. Plourde asked for anything to add before closing public comment.

T. McCarthy said no. When he purchased the property he had no intention to add units. When he had listed apartment in Milford on a Friday, tenant moved in on Monday. This was a great location, walking distance from the Oval. He one hundred percent understood issue with parking. Disappointed he didn't research it better and willing to address it if Planning Bd. requests that.

J. Plourde closed public comment. He said the Bd. would go into discussion of the criteria and get a feel from each member – not voting now, just discussing the criteria. No further comment or discussion from the audience. Then they will go into voting on the variance criteria.

W. Campbell first criteria of not being contrary to public interest was a tough one.

J. Dargie said public interest was concerns of the density. Can think it was contrary to public interest only in that it increased density. Could be a problem with cars parking on that street. Didn't know how wide it was. Probably about 25 ft. wide road. Today's standard was 50 ft. With current zoning you would not be able to meet even two family. It was already nonconforming use.

R. Costantino agreed.

M. Thornton agreed, but looking at parking by itself, if that were the main issue, he did see three units being accommodated when you looked at the back as a zone. If you looked at the front as a zone and the barn being able to accommodate some parking that would be able to contain all the vehicles in that manner for three units, but not four.

J. Dargie said one other thing to consider, as neighbor stated, when they look at their property line it is right up against their house. So what looked like their lawn was actually part of the road. Need to remember that whatever they grant would go with the property.

J. Plourde said re parking, he understood parking was associated to the Planning Bd. But when looking at density, that was where it came in. Others agreed.

M. Thornton said it looked like it would be too much in a small space.

J. Plourde asked members about spirit of the ordinance.

M. Thornton said spirit would be broken already if they were moving it into the modern day ordinance, but they were not because they didn't know when, where, and if. They didn't have total history of the property. Were they forced to go to today's rules and regulations entirely?

J. Plourde said the reason they do not go to full rules and regulations for the property today was because existing use was grandfathered.

M. Thornton asked when and where.

J. Dargie said it didn't matter.

J. Plourde said it meant it was existing and acceptable use today.

J. Dargie said looking at enlarging an existing nonconforming use.

J. Plourde said there were two things to look at. Would granting the variance alter the essential character of the neighborhood; and would it threaten the public health, safety and welfare. Not looking for yes or no, just discussing.

M. Thornton said it would alter something. More people, more autos. It would make a change no matter what, if you add more. But was it an unacceptable alteration?

J. Plourde said that was where they look at different specifications in the ordinance re number of units per acre. Other criteria they can consider, but that should not be basis of their judgment.

M. Thornton said because it was not as it was then, but as it is now.

J. Dargie could see footprint of the house not changing.

J. Plourde said you could see it that way on that. They were not changing footprint of the building or going higher.

J. Dargie said it will look the same.

W. Campbell said you were congesting parking and road access. What about snow and winter impact? Where will that go?

J. Plourde said that would be Planning Bd.

W. Campbell said he knew, but that is safety.

J. Dargie and J. Plourde agreed.

J. Dargie said you need to be able to see what's coming.

W. Campbell said when people start parking, it starts to creep.

J. Plourde asked about substantial justice. Was there gain to the public if this project was denied?

W. Campbell said the applicant stated he planned on doing two at some point anyway.

J. Dargie thought it was a gain to the public vs. detriment to the owner.

J. Plourde agreed. But this project had nothing to do with existing runoff.

J. Dargie said no. Relative to the increased density. If you only had two units instead of four, was that a gain to the public more than loss to the applicant?

M. Thornton said there was a loss to the public in not having additional units somewhere. Town isn't getting bigger in area. There was need for housing.

J. Plourde said that were a different zoning districts.

J. Dargie said that allowed for it.

J. Plourde said some more dense than others as far as units per acres. Didn't mean you could put 150 units on a postage stamp sized lot.

R. Costantino said he would say it was not a detriment. Agreed with M. Thornton - knew there were different zones but having more places for people to live close to town was a general benefit.

J. Plourde asked about diminishing value of surrounding property. Any impact if you grant this variance?

J. Dargie said if you considered taking out of the equation that the house had probably diminished values already in its current state. If it were all fixed up and was good looking, if you went from two to four family with that added density and added parking they could potentially diminish in this case, because you were

looking at a house not already up to par. He could improve it and question was whether if you will look at two family vs. four family with overflowing vehicles.

R. Costantino said the neighbors weren't that close. Three houses who could even see it. One was the person who spoke and another at the hill and one on different street across. Didn't see it being much affected if it was looking better on the outside. If it was more than two [units] not sure they would notice it.

W. Campbell said he was looking at picture from 2013 and it was kind of rough.

J. Dargie said whether it was two or four that didn't have anything to do with how it looked.

J. Plourde felt they were all in agreement that if it was two or four family there would be no impact on the abutters.

J. Dargie said unless parking in the back lot.

J. Plourde said based on the proposal in front of them today, there were no changes to the parking.

J. Dargie said they hadn't seen eight spaces. It was not planned out. She had asked about lot line. Can't use land that doesn't really belong to the property.

W. Campbell said they didn't know what drive was or property line. For all they knew, it could only get four cars in there.

J. Dargie said applicant said if he could do six.

M. Thornton said that was not their purview. It was a matter of concern for density and impact on the neighborhood.

J. Dargie said parking and cars was impact. The whole reason for density criteria. It was not 8 people or 25 people in the house. It was density. If density is only related to setback that would factor in property footprint staying the same. It was what comes along with it. Was that part of the density, or was it this house on top of that house. You could have a house on a little tiny lot and have ten children.

J. Plourde asked board about hardship criteria.

M. Thornton could see it both ways.

J. Plourde wanted M. Thornton's thoughts on both ways, because he saw only one side.

M. Thornton said there was consideration for existing neighbors. Then for the good of the whole area in having more people being housed.

J. Plourde said that wasn't hardship.

M. Thornton said not to this case. It was a consideration, not hardship. They should at least consider.

Hardship came to the fact, did it rise to the point that it should militate against. Didn't think it did. It would increase density of friction of people vs. people in cars in the neighborhood. Not sure it rose to the point of not letting it go forward. Talking about three units, not four. Had hard time seeing four units; thought that rose to the point of disagreeableness, perhaps to the point of hardship to the surrounding area. Wrestling with that.

R. Costantino didn't see uniqueness in the property that was hardship.

M. Thornton said not in the property itself.

J. Plourde said that was what hardship was about. It was similar to a lot of the other lots in the area, similar in nature.

M. Thornton agreed and said also in density.

J. Plourde this was the one he struggled the most with. Was open minded to what others could say. Having hard time finding hardship to the land to justify granting the variance.

W. Campbell said he was not either.

J. Dargie understood he was saying it was a large square footage home on a small piece of property. Same with some other properties in neighborhood. It was already nonconforming grandfathered by being two family. If it was not already in existence it would be single family conforming. If they already had a two family, that's not a hardship because you already had a two-family to make income from. If it was said to be single family that may be a hardship because you couldn't justify putting that money into it, although that was not a factor.

M. Thornton said you can't apply those standards at the time and grandfathered situation with the property now. Can't go back and retrofit it. It will be at least two. Didn't see how it would be four.

J. Plourde asked if they were ready to vote. All agreed.

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

J. Dargie – yes; W. Campbell – yes; R. Costantino – no; M. Thornton – yes; J. Plourde – no

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

M. Thornton – yes; R. Costantino –yes; W. Campbell – yes; J. Dargie – yes; J. Plourde - yes

3. Would granting the variance do substantial justice?

J. Dargie – yes; W. Campbell – yes; R. Costantino – yes; M. Thornton – yes; J. Plourde - yes

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

M. Thornton – yes; R. Costantino – yes; W. Campbell – yes; J. Dargie – yes; J. Plourde – yes

5. Would denial of the variance result in unnecessary hardship?

J. Dargie – no; W. Campbell – no; R. Costantino – no; M. Thornton – no; J. Plourde – no

J. Plourde said based on the vote the criteria had not been satisfied and the application was denied.

J. Plourde informed applicant of the 30-day appeal period.

There being no other business before the Board, M. Thornton moved to adjourn.

J. Dargie seconded.

All in favor.

Meeting adjourned at 8:20 p.m.