

**Town of Milford
Zoning Board of Adjustment
February 7, 2019
Case #2019-01
Jean Family Revocable Trust
Variance**

Present: Steve Bonczar, Chairman
Michael Thornton
Rob Costantino
Karin Lagro, Alternate
Robin Lunn, Zoning Administrator

Absent: Jason Plourde, Vice Chair
Joan Dargie
Wade Scott Campbell, Alternate
Tracy Steel, Alternate
Laura Dudziak, Board of Selectmen Representative

Secretary: Peg Ouellette

Jean Family Revocable Trust, for the property located off North River Rd, Milford Tax Map 3, Lot 10, in the Residential R district is seeking a Variance of the Milford Zoning Ordinances per Article II, Section 2.01.0 to allow for this lot of record to be classified as a buildable lot without fifteen (15) feet of road frontage on a class V or better road.

APPROVED 6/20/19

Motion to Approve: _____

Seconded: _____

Signed: _____

Date: _____

55 Steve Bonczar, Chair, opened the meeting and introduced the Board members. He informed all of the
56 procedures of the Board. There being several regular Board members absent, he asked to seat Karin Lagro,
57 Alternate, as fully participating and voting member. All in favor.
58 S. Bonczar read the notice of hearing into the record.
59 Marissa Schuetz, of the Alfano Law Office, Inc., acting as counsel for Andrew Gardent, the applicant, who
60 was seeking a variance for a lot of record. She said the property was a landlocked parcel as shown on the tax
61 map--no frontage on any road. It was currently 28 acres, more or less, parcel. Requirement for lot of record
62 was two acres. It had a current access easement across Lot 9. They were working on an easement on Lot 11
63 to be 25 ft. going through the property to give 25 ft. of frontage on North River Rd. Current access easement
64 on Lot 9 was 20 ft. frontage going through Lot 9 and frontage on North River Rd. Property currently
65 undeveloped. Lot of record required 15 ft. access, so this would give greater frontage on the road. It will be
66 via an easement. Otherwise the parcel was conforming to residential use in residential areas. Plan was to put
67 a single family residence on the property. No other subdivision happening. Will keep property largely the
68 same.
69 R. Costantino asked the length of the driveway. 3,000 ft.?
70 Michael Ploof of Fieldstone Land Consultants, in the audience, said it was about 3,000 ft long and 25 ft wide.
71 R. Costantino asked if they were getting a right of way and they had to build on it or did the owner build.
72 M. Schuetz said the applicant would be building.
73 R. Costantino asked if that would be where electricity came through.
74 M. Schuetz said yes.
75 R. Costantino said if you asked what lot it was, it said Jean Trust off of another Rd.
76 M. Thornton said going up to Lyndeborough.
77 R. Costantino asked if the Jean Trust also owned the lot north of it.
78 R. Lunn said they weren't there yet.
79 S. Bonczar agreed. Said to hold that question. He pointed out where access will be coming from and pass
80 through Lot 11 to Lot 10.
81 K. Lagro asked if Lot 11 was undeveloped.
82 M. Schuetz said it was.
83 S. Bonczar asked if there was nothing on Lot 11.
84 M. Schuetz referred to the green areas on the map, wetlands and a proposed easement. Proposed easement
85 will not be affecting wetlands. Will be building with consideration of not disturbing anything.
86 S. Bonczar said they would have to come before the ZBA for wetlands based on design of the access road.
87 They were not discussing that this evening. Only discussion they needed to have was a buildable lot on a lot
88 that doesn't conform.
89 R. Lunn said it had no frontage.
90 S. Bonczar agreed. They had to have 15 ft
91 M. Schuetz the easement was granted in 1919. Parcel probably was created at that time; landlocked at that
92 time, prior to current ordinances in 1969 requirement allowing for lot of record.
93 S. Bonczar said it was interesting how back then extra pieces got formed.
94 R. Costantino said it wasn't just that.
95 S. Bonczar said it was still a lot. It was formed from something bigger. At some point it was deemed a
96 single lot in itself.
97 R. Costantino didn't know whether they had talked to the Tax Assessor. Did this change current use by
98 making it a different use? Tax change?
99 M. Schuetz said she hadn't talked to the Tax Assessor. Not sure if R. Costantino was asking about Lot 11.
100 R. Costantino said Lot 11. It was more than an acre. Tax Assessor's job was to look for something they can
101 tax on.
102 R. Lunn said, would it disturb tax classification for Lot 11, was what he was asking.
103 R. Costantino said if you change, you billed the change
104 S. Bonczar said it depended on how it was currently accessed. If it was not current use.
105 M. Schuetz said she didn't know if it was in current use. No plans to develop Lot 11.
106 R. Costantino said the road might not be taxed; didn't know if it would.
107 M. Schuetz said she wasn't sure.

108 R. Lunn wondered what alternative to putting access way to that lot had been looked at. Instead of Lot 11,
109 any conversation about going through the conservation easement to the subdivision. Or by taking roadway
110 access through Lyndeborough?

111 M. Ploof (Fieldstone Land Consultants) said they had not had conversation about going through conservation
112 land. If you went through Lyndeborough, his lot on the other side was also landlocked. Distance would be
113 further to go from the Center Rd.

114 R. Lunn said she was not suggesting Center Rd. Suggesting from South River Rd.

115 M. Ploof said that had not been investigated yet.

116 S. Bonczar wanted M. Schuetz to continue the presentation

117 M. Schuetz said the lot was currently undeveloped. Granting the variance to allow it to be a lot of record
118 would keep it residential property. Would just be a single family home and would be far and buffered from
119 the conservation land. Would not significantly change neighborhood. Would allow for more productive use
120 of the property. Current owner unable to use property as it is. Only a small access easement to it. Allowing
121 would allow it to be productive and to be used in a way consistent with the neighborhood.

122 S. Bonczar asked for distance between property markers on the frontage of North River Rd.

123 R. Lunn said about 71 ft.

124 S. Bonczar said that was not even conforming with existing ordinances, as it is, if you wanted to build on that
125 lot.

126 R. Lunn said not to be a lot of record you must have 15 ft.

127 S. Bonczar agreed. He was forgetting that. In that it followed the preexisting ordinance.

128 M. Schuetz said, to further address the potential of going of the Gortland land, it would require going to
129 another property owner to negotiate an easement. Also in a different town, which would make it difficult;
130 also would go through conservation easement. She had not read conservation easement on the town land but
131 generally restrictions on allowing other easements.

132 R. Costantino asked about utility poles.

133 M. Schuetz said there would be access.

134 K. Zahn (of Keller Williams Real Estate) said that decision had not been made yet.

135 M. Schuetz there would be consideration to cope with them esthetically with the neighborhood. As well as
136 the public.

137 R. Lunn asked if they had spoken to Police, Fire and Ambulance to find out their consideration for a
138 driveway for that length.

139 M. Ploof said that would be in the design. Haven't designed the driveway yet. Just proposing access.

140 M. Schuetz imagined as long as it was paved as a normal driveway.

141 M. Thornton said their concerns were access and ability to turn around and egress. It would be good for
142 them (applicants) to use time to research.

143 M. Schuetz said before the design was finalized, sure there would be a way. 25 ft wide would be wide
144 enough to go straight down. Will be a drive and the lot itself. That would be a turn around.

145 S. Bonczar said the easement would be 25 ft.; but the driveway would not be that wide.

146 M. Schuetz said easement will be 25 ft. Drive will be within that.

147 S. Bonczar said they didn't know the topography.

148 R. Costantino asked if a decision was made to pave

149 M. Schuetz said it was not. Maybe paved or packed gravel.

150 R. Lunn showed a slide of the topography.

151 M. Schuetz said easement going more toward flatter area of the lot as much as possible.

152 M. Ploof said they staked it out; took into consideration the flattest. That would best route across property to
153 get to the back.

154 R. Costantino asked about maintenance and plowing.

155 M. Schuetz said the applicant will be plowing and maintaining access.

156 S. Bonczar asked for any other questions from the Bd. None. He opened the meeting for public comment.

157 Karl Zahn of Keller Williams, representing Bob Jean, the owner of the piece on the north owned by the same
158 family. 54 acres. Served by easement already done over Holt property of 50 ft. wide easement. He thought
159 the way they came about this planning the existing easement. In the next lot the McLeods owned acres back
160 to the 1900s. Over the course of a couple of years they were nice enough to offer alternative to move
161 easement. If this (application) was approved they would remove that other easement. Bob Jean did approach
162 the town about easement. His late wife was Mrs. Hayward of Hayward's Ice Cream. Was told it was pasture

at the turn of the century. A lot of thought had gone into getting to the piece of land because of graciousness of the McLeods. The 25 ft. easement. They will give temporary 25 ft easement for construction and then 15 ft wide. They have allowed verbally because with cuts and grading they may have to go beyond that 25 ft. They have allowed that. Will be 25 ft when they build and ultimately 15 ft.

Chris Mott came forward. Her sister and she own McLeod Brothers. Re current use, she spoke to the Assessor's Office this week and Marty said the drive and easement should not change the whole lot to disqualify from current use. However, whatever egress was required would come out of current use and would be taxable event. Some of those responsibilities will fall to the buyer of 3-10.

S. Bonczar asked for any other questions or anyone wanting to provide information. None. He asked for any further questions from the Bd.

K. Lagro said the last two speakers answered all of hers.

M. Ploof said there was an existing easement they had been talking about. He believed the existing one snaked down through N. River Rd. If there was a driveway there you would not see it from the adjacent properties. It was well hidden as you came from the side. Didn't think anyone would know it was there.

R. Costantino asked if the current land that they were proposing to make buildable was used currently for logging or timber sales.

Kris Mossey of McLeod Brothers Orchards said Bob Jean had timbered that property in the past. It didn't disturb them. They would be allowing that in future for that property because it made sense.

S. Bonczar asked if there was anything else from the Bd. Nothing.

S. Bonczar closed public comment and said they would discuss what they had heard and deliberate. He said everybody understood that this situation that predated the ordinance. He read from the Ordinance, Sec. 2.01.01 regard a lot of record. He also read from Sec. 5.04.4 b in the Ordinance for Res. R. form 2009 regard lot sizes and frontages. He said he was just stating that if someone came and wanted to build today the lot would have to have that [meet the ordinance].

M. Thornton cited the requirements for access for fire vehicle access. Has to be designed to accommodate a lot of fire apparatus (i.e. a truck full of water). He questioned 15 ft as a long term adequacy. He encouraged them to talk with the Fire Dept. to avoid embarrassment later.

R. Costantino said he wasn't sure he understood the thing about the impact of the 300 ft.

S. Bonczar said M. Thornton was saying that if you went by the ordinance you would need that much frontage. He remembered a discussion way before with the fact that developers were coming in and chopping up large amounts of land to lots that had back lots. For example, his lot on Jennison Rd shares a drive with the lot in the back. In 2009 ordinances were changed to prevent that from happening. He was just mentioning that for a big lot. This was already in existence. If someone wanted to chop it up under the existing ordinance it would be difficult and have a back lot. When they talk about variance and hardship this may or may not come into play for what he sees.

K. Lagro said if it was not already a lot of record, it would be different discussion.

S. Bonczar agreed. Because it was a lot of record it still didn't meet the ordinance prior to 1969

R. Costantino said it will always be a lot of record.

S. Bonczar said unless someone said they wanted to absorb it into something else.

S. Bonczar said they would now discuss the five criteria for a variance.

He asked if granting the variance would not be contrary to the public interest.

M. Thornton said yes, it was not contrary to the public interest. It didn't cut through and impinge upon or endanger the conservation land nearby and it seemed to have widespread support from the neighbors.

He saw no harm to the rest of the town.

S. Bonczar agreed. Less contrary to public. Didn't see any harm to public if it was granted. Didn't think it intentionally violated the ordinance and the intent of the ordinance in Res. R to keep a lower density area.

M. Thornton said they would have to argue completely in the other direction with a 28 acre parcel where only two acres were required. There could be 14 properties spun off and they were keeping it at one.

R. Costantino said, re the spirit of the ordinance, it didn't endanger the health, welfare and safety of the community.

S. Bonczar said it also had to do with 2009 ordinance that he read, was it keeping density in R district low and not having lots with minimum frontage, etc. The thinking behind that was when you had a large lot and were breaking it up. This one was already in existence. There will be no overcrowding of the area if this was approved as a buildable lot with that access. He asked if anyone had anything to add. Nothing.

217 Re substantial justice, S. Bonczar read from the Manual (The Board of Adjustment: A Handbook for Zoning
218 Officials) which said perhaps the only guiding rule was that any loss to the individual that was not
219 outweighed by a gain to the general public is an injustice.
220 R. Costantino didn't see it as an issue.
221 M. Thornton didn't see injustice. The town wasn't aggrieved and the owner would not be aggrieved by
222 pursuing the course laid out.
223 S. Bonczar said by enforcing the ordinance to the letter of the law he didn't see a gain to the public by the
224 owner not having a buildable lot.
225 R. Costantino agreed.
226 S. Bonczar asked about diminishing the value of surrounding properties.
227 R. Costantino said this one he had an issue in that he was thinking the surrounding properties was the
228 property with the easement. He thought you would be less likely to purchase that property with a road across
229 the property and easement like that.
230 M. Thornton said if the lot impinged on what you were purchasing.
231 R. Costantino said if he were purchasing that lot he would be less likely to do it or would pay less because of
232 this other road.
233 S. Bonczar understood his thought. The fact that the easement was being granted by the current owner of
234 that property. If they felt their property would be severely diminished they would not do it. He was looking
235 at that.
236 R. Costantino said the idea was less density. Minimum size in Res. R was two acres. You have 28 acre
237 property. Adding didn't diminish. He didn't disagree re Lot 111.
238 K. Lagro the easement already existed in Lot 9. Basically said they were swapping Lot 9 for 11. There
239 would not be any overall loss. That would actually increase convenience for them.
240 R. Costantino said that was a good point.
241 S. Bonczar moved on to discuss unnecessary hardship. In reading this they should take this in total and also
242 that the proposed use is a reasonable one. Take them together. He took notes as he reviewed the plan. Still
243 felt the same after the presentation. Would like to hear from Board members first.
244 R. Costantino said when he looked at the question of hardship he thought of the uniqueness of the property.
245 He did research and there were about 40 other landlocked properties. There were various things about them.
246 Some were owned by conservation commissions or things like that. Some of them had access like these
247 applicants were trying to get. Those were also owned by the lot in front of the lot. In his opinion it was not a
248 unique lot because there were a lot of them. One of the things that wasn't quite unique 3000 ft. drive, almost
249 have a mile. Even if it was not unique they should look at each case based on the merits of the case itself.
250 That was what he was trying to say.
251 S. Bonczar said when R. Costantino finished his last sentence that was when he started to agree. There may
252 be many landlocked lots in town but they had to look at each situation.
253 M. Thornton said it was his position that the position of the land in itself by its location and lack of it was a
254 special and unnecessary hardship because the hardship can be alleviated by the goodness of the neighbors by
255 exchanging of values for what the town recognizes as adequate or generating no harm. Property owner gets
256 to use the property in accordance with the law with lower density. Unnecessary hardship to deny the access.
257 S. Bonczar felt condition and circumstances presented a hardship. It was a landlocked lot. How it became
258 landlocked, who knew? The Cortland Baldwin subdivision was there and may have been a way to get in and
259 out. This was formed way before 1969. Now it is more restrictive as to what you can and cannot do. This
260 was a single use; it was 28 acres. In a nearby development you had houses on a lot less acreage. He thought
261 it was a hardship and what was proposed was a reasonable use.
262 K. Lagro agreed because it was landlocked.
263 R. Costantino said that wasn't unique to that land. In his mind it was never intended to be used for a single
264 family house. It was meant to be timbered.
265 S. Bonczar said they didn't know that.
266 M. Thornton said you would still need access.
267 R. Costantino said they had that.
268 M. Thornton asked, temporary access?
269 R. Costantino said they had access for timbering.
270 S. Bonczar thought the solution was a good one. For owner to use it beyond timbering. It was very
271 restrictive on what could be done with that lot beyond timbering.

R. Costantino said it was.
S. Bonczar said it was not filed so it couldn't be hayed or anything like that. In that case, compared to other lots in the area it constituted a hardship.
R. Costantino understood where S. Bonczar was coming from. Thought in some ways it was a good idea, but didn't it was a hardship.
M. Thornton asked how the town was benefitting.
R. Costantino said that was not hardship. That was questions 2 and 3, and he didn't see a problem with health and safety.
S. Bonczar read from Variances, Sec 1 (5) (b) (A), Powers of the ZBA re the meaning of unnecessary hardship. R. Costantino had brought up others in town, which was true. But what about this area. If you take into consideration the surrounding area?
R. Costantino thought Milford was the area they should think about. There were others around it. One further down the road across from the fish hatchery. There were a couple on the Wilton line near there. There were others around it – three from his notes. He thought this was a town thing, not a neighborhood thing. There was no neighborhood, almost.
S. Bonczar disagreed. He looked at whole section as neighborhood, including Cortland and Baldwin [pointing to the map]. He asked if Bd. members had anything else to add re the five criteria.
S. Bonczar asked if they were ready to vote. All agreed.

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

R. Costantino – yes; M. Thornton – yes; K. Lagro, yes; S. Bonczar - yes

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

K. Lagro – yes; M. Thornton – yes; R. Costantino – yes; S. Bonczar – yes

3. Would granting the variance do substantial justice?

M. Thornton - yes; K. Lagro – yes; R. Costantino – yes; S. Bonczar - yes

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

R. Costantino –yes; M. Thornton – yes; K. Lagro – yes; S. Bonczar - yes

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

K. Lagro – yes; M. Thornton – yes; R. Costantino – no; S. Bonczar – yes

S. Bonczar said based on the vote there were three votes to approve and one against. Therefore, the majority rules and the application was approved and the criteria for the variance satisfied.

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

There being no other business before the Board, S. Bonczar asked for a motion to adjourn.

M. Thornton moved to adjourn.

R. Costantino seconded.

All in favor.

Meeting adjourned at 8:00 p.m.